

86IMMANT

Agostini - cross

1 A. Victor Cabassa.

2 Q. When was the DD5 -- what date is that DD5 dated? When does
3 it appear to have been created?

4 A. I believe it was February 12, 2001.

5 Q. Again, the day of the homicide?

6 A. Yes.

7 Q. What does this document indicate or what event does it
8 memorialize in the course of the investigation?

9 A. It basically says canvass of 1545 White Plains Road.

10 Q. And Detective Agostini, are you able to tell from that DD5
11 how many places or how many individuals where canvassing was
12 done at 1545 White Plains Road?

13 A. Hold on for a second. Approximately 15 apartments they
14 went to interview.

15 Q. Fifteen apartments appear on that one DD5 alone, isn't that
16 correct?

17 A. Yes.

18 Q. If you could explain -- I believe you may have done this --
19 what exactly is canvassing?

20 A. Basically, if a shooting happens at a certain location you
21 want to canvass that building or the buildings next to it
22 because someone might have seen something.

23 Q. The homicide occurred at 1700 Metropolitan Avenue, correct?

24 A. Yes.

25 Q. That canvass, however, indicates that the canvass was done

86IMMANT

Agostini - cross

1 at 1545 White Plains Road?

2 A. That's correct.

3 Q. Why would a canvass be done all the way over at another
4 section of the Bronx?

5 A. Ma'am, I couldn't tell you.

6 Q. But, again, could this be to canvass other areas?

7 A. It could be.

8 Q. And was this DD5 a part of your case file?

9 A. Yes.

10 MS. OKEREKE: Now entering into evidence what's been
11 marked as Defendant's U-4.

12 (Defendants' Exhibit U-4 received in evidence)

13 MR. JOSEPH: Over objection, your Honor, for the
14 record.

15 THE COURT: Why? Do you have a ground.

16 MR. JOSEPH: I do, Judge. This indicates quote
17 unquote what a police dog did, and it runs afoul of Federal
18 Rule of Evidence 702.

19 THE COURT: It is getting far afield, I think, Ms.
20 Okereke, to what we are doing here, but I'll allow this one.

21 MS. OKEREKE: Thank you, your Honor.

22 Q. Who prepared this DD5?

23 A. Detective Mallon.

24 Q. When was this document created?

25 A. February 12, 2001.

86IMMANT

Agostini - cross

1 Q. And what does this document indicate?

2 A. It says subject, ATF canine.

3 Q. If you could please read that DD5 to the jury.

4 A. It says: Monday, February 12, 2001, at approximately 2115
5 hours, Detective Clovis and I were present with PO William H.
6 Brush, III of North Andover Police Department, Andover,
7 Massachusetts and his canine Iris who was brought to a Nissan
8 Maxima, New York, registration -- I won't say the number --
9 which was marked on White Plains Road in front of 1540. At
10 this time the handler calibrated Iris. Shortly after Iris was
11 brought to the subject vehicle, Iris hit on the driver's door
12 handle, the trunk and the right rear wheel well. P.O. Brush
13 further informed me that he is a sworn North Andover police
14 officer, shield No. 36, and was trained by ATF. The ATF, who
15 also provided Iris, who is two and a half years old --

16 THE COURT: That's enough. I'm sustaining the
17 objection and striking the testimony. Do you have something
18 else?

19 MS. OKEREKE: The entire DD5?

20 THE COURT: The entire testimony, not the DD5.

21 MS. OKEREKE: Defendants will not move onto the next
22 DD5. Your Honor I will first introduce what has been marked as
23 V-4.

24 (Defendants' Exhibit V-4 received in evidence)

25 Q. Who prepared this document?

86IMMANT

Agostini - cross

1 A. Detective Mallon.

2 Q. When was this document created?

3 A. February 12, 2001.

4 Q. Again, the date of the homicide, correct?

5 A. Yes.

6 Q. What does this DD5 indicate?

7 A. A canvass of 1590 Metropolitan Avenue.

8 Q. How many buildings, if you're able to ascertain from the
9 document, how many buildings does that DD5 reflect were
10 canvassed at 1590 Metropolitan Avenue?

11 A. I would say more than 15 apartments.

12 MS. OKEREKE: Defendants now introduce into evidence
13 what's been marked as Exhibit W-4.

14 (Defendants' Exhibit W-4 received in evidence)

15 Q. Who prepared this document?

16 A. I can't read the name.

17 Q. Was this document prepared by a detective that was a part
18 of the investigation?

19 A. I can't see the name, so I can't say.

20 Q. Does this document memorialize an event that occurred
21 pursuant to the investigation into Albert Acosta's homicide?

22 A. Yes.

23 Q. What does this document indicate?

24 A. It says response to Mt. Vernon shooting range.

25 Q. Why was there a response to Mt. Vernon shooting range?

86 IMMANT

Agostini - cross

1 THE COURT: If you know.

2 A. I don't know. I just have to read it.

3 Q. Actually, if you could please read the document for the
4 jury.

5 A. On February 12, 2001, at approximately 2000 hours, I, along
6 with Detective Carini of the 40th Precinct Detective Unit, did
7 respond to Mt. Vernon, New York shooting range (magnum range)
8 located at 172-174 Gramatan Avenue in Mt. Vernon. An attempt
9 was made to obtain any information available at the range on
10 one Anthony Manganiello. The range was closed and we were
11 unsuccessful in gaining entry. In view of the above-listed
12 information, it is recommended that this case be active.

13 Q. Was this document a part of your case file?

14 A. Yes.

15 THE COURT: Why would this totally negative
16 essentially useless DD5 have a conclusion that suggests that
17 the case be active?

18 THE WITNESS: Any time a homicide or any case, any
19 crime that is not closed with an arrest, it remains active.

20 THE COURT: And they add that to the line, sort of a
21 tag line.

22 THE WITNESS: That it's active, that it's not a closed
23 case.

24 Q. And each of the DD5s that are created in the investigation
25 are created while an investigation is active, isn't that

86 IMMANT

Agostini - cross

1 correct?

2 A. Yes.

3 MS. OKEREKE: Your Honor, defendants introduce
4 Defendants' Exhibits B-5, C-5, and actually, additionally, D-5.5 (Defendants' Exhibits B-5, C-5, and D-5 received in
6 evidence)7 Q. Detective Agostini, do each of the DD5s that you have
8 before you memorialize investigative actions that were
9 conducted in connection with the investigation?

10 A. Yes.

11 Q. When were those documents prepared?

12 A. They were all prepared on February 12, 2001.

13 Q. What investigative action do those DD5s indicate occurred
14 on February 12, 2001, the day of the homicide?15 A. One of them is a canvass of 1585 Odell Avenue, the other
16 one is a canvass of 1595 Odell Avenue, and the other one is a
17 canvass of 1680 Metropolitan Avenue.18 Q. Approximately, if you can, briefly, let us know how many
19 total apartments and buildings were canvassed or represent --
20 those DD5s represent were canvassed?21 A. They went to at least more than ten apartments on each
22 building.

23 Q. Why do officers canvass apartments, several apartments?

24 A. Basically, you do can canvasses just to see if you find a
25 witness to the case.

86IMMANT

Agostini - cross

1 Q. These were conducted on February 12, 2001?

2 A. Yes.

3 THE COURT: Are we finished with this line of
4 questioning? Because I am.

5 MS. OKEREKE: Again, your Honor --

6 THE COURT: We are not asking you for your response.

7 MS. OKEREKE: No.

8 THE COURT: We are going to move along to something
9 else.

10 MS. OKEREKE: There are additional DD5s --

11 THE COURT: There may well be, but they are not coming
12 in now, and maybe never.

13 MS. OKEREKE: Thank you, your Honor. Defendants
14 will --

15 THE COURT: You don't have to thank me. I'm just
16 doing my job, trying my best.

17 Q. Detective Agostini, during the course of your investigation
18 did you speak with the district attorney's office?

19 A. Yes.

20 Q. And approximately how often would you speak with the
21 district attorney's office in the course of this investigation?

22 A. I will say at least once a week.

23 Q. And why did you conduct these conversations or have these
24 conversations?

25 A. Basically, if I find something new in the case, I would

86IMMANT

Agostini - cross

1 relay it to the ADA to see where we could go from there.

2 Q. Would the ADA give you any directions? What was the ADA's
3 responses to these conversations?

4 A. I don't remember at this point what was the ADA's response.

5 Q. Were there typical things that you were ever directed to
6 do, or were you ever directed to take any activities by the
7 ADA?

8 A. I don't remember.

9 Q. But these discussions did occur --

10 A. At least once a week I will tell her any updates on the
11 case, if we had any.

12 Q. And did each of these conversations occur prior to the date
13 that the grand jury presented her case -- prior to the date
14 that the district attorney presented her case to the grand
15 jury?

16 A. Yes.

17 Q. I'd like to continue to discuss more about some of your
18 activities. Did you conduct an interview with a confidential
19 informant named Terrence Alston on February 15, 2001?

20 A. Yes.

21 Q. Please explain for us -- I know you've testified previously
22 about Terrence Alston, but who is Terrence Alston?

23 A. Terrence Alston -- at first, when you say confidential
24 informant, I didn't know he was a confidential informant. I
25 knew him as Terrence Alston. He had information he stated

86IMMANT

Agostini - cross

1 about a security officer asking him to kill another security
2 officer.

3 Q. Did you independently learn about Mr. Alston?

4 MR. JOSEPH: Objection. I am not sure what that
5 means.

6 Q. How did you learn about Terrence Alston?

7 A. There was a DD5 from a Detective Ramos who had made a DD5
8 saying I don't know, I have to look at it. I don't know
9 whether he interviewed Alston or was it by phone, and that
10 someone in jail by the name of Terrence Alston had information
11 on this case.

12 MS. OKEREKE: Your Honor, defendants introduce into
13 evidence what's been marked as Defendants' Exhibit F-8.

14 (Defendants' Exhibit F-8 received in evidence)

15 Q. Who prepared this document?

16 A. Detective Ramos.

17 Q. When was this DD5 created?

18 A. February 12, 2001.

19 Q. What does this DD5 indicate, if you can actually please
20 read the DD5 for the jury.

21 A. Interview of Terrence Alston.

22 On February 14, 2001, at approximately 1610 hours, the
23 undersigned received a phone call from Detective Parker of
24 intel who stated that he has a CI at Rikers Island who has
25 information regarding the homicide at Parkchester.

86 IMMANT

Agostini - cross

1 On February 14, 2001, at approximately 1720 hours,
2 Detective Bencenvingo and the undersigned were present at
3 Rikers Island gang intel building. The undersigned took a
4 verbal and written statement from Terrence Alston as follows:

5 I, Terrence Alston, make the following statement: In
6 late August of 2000, a uniformed security guard from
7 Parkchester approached me and asked if I could do him a favor.
8 I asked him, what is the favor? He told me that he wanted
9 another security guard killed. I asked him why he wanted him
10 killed, and he said he wanted him killed because he was fucking
11 with a girl. He then asked me if I needed a gun, and I told
12 him I have one already. He asked, what is the price, and I
13 told him that I did not know right now. I'll get back to you.

24 Q. Did Detective Ramos, who conducted that interview, did he
25 give you this DD5 during your investigation?

86IMMANT

Agostini - cross

1 A. I don't know. Maybe he gave it to me personally, but I
2 received the DD5, yes.

3 Q. It was a part of your case file?

4 A. Yes.

5 Q. And it was a part of the information given to the DA?

6 A. Yes.

7 Q. Did you subsequently then or you testified you conducted
8 another interview with Mr. Alston, is that correct?

9 A. That's correct.

10 Q. What information did you obtain during this investigation
11 or during this interview?

12 A. Basically, the sum and substance, the same information that
13 he gave Ramos.

14 Q. Did Mr. Alston give you any information concerning how he
15 knew the plaintiff?

16 A. He said he seen him in Parkchester.

17 Q. Did you have any independent information about Mr. Alston?

18 A. Independent information meaning?

19 Q. Did you know where Mr. Alston lived?

20 A. Yes. I believe his family lives in Parkchester.

21 Q. Parkchester, again, is the same area where the homicide
22 occurred?

23 A. The same complex.

24 Q. Did you believe Mr. Alston when he gave you this
25 information?

86IMMANT

Agostini - cross

1 A. I don't know whether to believe him or not believe him, but
2 I have to check out the information he gave me.

3 Q. Why did you have to check out the information he gave you?

4 A. Basically, to see if it's true or not.

5 Q. Did you find Mr. Alston credible?

6 A. Not that I find him credible. I was just listening to the
7 information he was giving me. I don't know Terrence Alston to
8 find him credible.

9 Q. With respect to credibility decisions, is it a case
10 detective's role to make determinations as to the credibility
11 of evidence?

12 A. Once you investigate it, yes.

13 Q. Is it the role of the case detective to classify
14 information as credible or incredible, to classify them into
15 those categories prior to giving this information to the
16 district attorney's office?

17 A. I just give them what they say. I don't say whether they
18 are credible or noncredible. I give them the information, what
19 it is, and they determine themselves whether they find it
20 credible or not credible.

21 Q. Is that your understanding of what your duties are as a
22 detective?

23 A. That's my understanding, yes.

24 Q. Did you show Mr. Alston a photography book with several
25 pictures, including one of the plaintiff, during your interview

86IMMANT

Agostini - cross

1 with them?

2 A. Yes.

3 Q. Was Mr. Alston able to identify the plaintiff?

4 A. Yes.

5 Q. Did the fact that Mr. Alston was able to identify the
6 plaintiff affect your assessment of him in any way?

7 A. Mainly, it showed me that he knew the person.

8 Q. Did you speak with the district attorney's office regarding
9 your interview with Mr. Alston?

10 A. Yes.

11 Q. And do you recall when you spoke to the DA's office about
12 this?13 A. No. I know any time I do anything I need updates, I will
14 keep her informed.15 Q. So you gave the full details of your interview with Mr.
16 Alston to the district attorney?

17 A. Yes.

18 Q. Did you conduct a further investigation into any of the
19 information which Mr. Alston provided you?

20 A. Yes.

21 Q. And what further investigation did you conduct?

22 A. I basically found out who this Johnny person was.

23 Q. You previously testified about this Johnny. What, if
24 anything -- did you eventually find -- you did find this
25 Johnny. You testified to that, correct?

86IMMANT

Agostini - cross

1 A. That's correct.

2 Q. What did this Johnny say to you?

3 A. Like I said, I don't remember this Johnny Baker, the actual
4 conversation. I just found out that it wasn't him. I remember
5 that it wasn't him, but I don't remember the actual
6 conversation.

7 Q. Did this information that you found out affect your
8 assessment of Terrence Alston, who provided this information to
9 you?

10 A. In some way, yes.

11 Q. And how so?

12 A. Meaning, you know, he gave me the wrong person and now I am
13 going to talk to him about it.

14 Q. And what happened when you talked to him about it?

15 A. It was over the phone and he told me, I told you not to
16 look for the person, basically not to look for the person. And
17 I said, well, I basically found him, interviewed him, and he's
18 not the guy. And he stated, I'm not going to give you the guy
19 until I get out.

20 Q. Why do you think Mr. Alston didn't tell you the full truth
21 regarding his knowledge about the plaintiff and Albert Acosta's
22 murder?

23 MR. JOSEPH: Objection. Calls for speculation.

24 THE COURT: Sustained.

25 Q. Does the fact that Mr. Alston was not completely truthful

86IMMANT

Agostini - cross

1 with you affect your opinion about the other information he
2 provided you?

3 A. No.

4 Q. Why is that?

5 A. Because the other information -- he pointed out the guy, he
6 gave me the information. The only thing I was thinking about
7 is, he gave me the wrong guy just so he could get out.

8 Q. What do you mean by get out?

9 A. Meaning maybe he could get out of jail and he could supply
10 the right guy. He was basically negotiating.

11 THE COURT: Is it your decision whether he gets out of
12 jail or not?

13 THE WITNESS: No, sir.

14 THE COURT: Where did you have to go to make that
15 happen?

16 THE WITNESS: I kept information and I spoke to the
17 DA's office of what's happening and I told the DA, I checked
18 this guy out and he wasn't it. This guy says he knows who it
19 is, he just wants to get out, and I just relay her the
20 information, but I had nothing to do with him getting out of
21 jail.

22 Q. Let me ask you further about this getting out and what your
23 role is in someone getting out. As a detective investigating a
24 homicide, do you have any control as to the deals or anything
25 that is made with a witness?

86IMMANT

Agostini - cross

1 A. No.

2 Q. Do you have any role in that?

3 A. No.

4 Q. What information, if any -- did Mr. Alston subsequently
5 provide you with this correct information?

6 A. He provided the DA's office with the right information.

7 Q. What was that right information?

8 A. I believe that was Damon.

9 Q. And you previously testified that you were present during
10 the interview of Mr. Damon?

11 A. Yes.

12 Q. What did you learn from Mr. Damon?

13 A. Basically, that he stated that he sold the gun to a white
14 male, heavy set, Italian.15 Q. And the district attorney was present during this meeting,
16 correct?

17 A. Yes.

18 Q. At some point did you interview an individual named or
19 Parkchester security official named SPO Anthony Langhorn?

20 A. Yes.

21 Q. Who is SPO Langhorn?

22 A. I guess he's a Parkchester security person.

23 Q. What were the circumstances of your encounter with him?

24 A. I am not sure. It was basically an interview.

25 Q. And what information did SPO Langhorn provide you with?

86IMMANT

Agostini - cross

1 A. I need to see the document.

2 Q. We will come back to that in a moment.

3 Did you at some point interview an individual named
4 Sal Miro in connection with Albert Acosta's murder?

5 A. Yes.

6 Q. Who is Mr. Miro?

7 A. He's a witness that we interviewed who lives in Parkchester
8 and stated basically that his friend from the pizzeria, I
9 believe it's Chris Tartone, had told him that Anthony
10 Manganiello was in the pizza shop at one time asking for a gun.

11 Q. And did you eventually conduct an interview with this Chris
12 Tartone?

13 A. Yes.

14 Q. And please tell us again, what did Mr. Tartone tell you
15 during this interview?

16 A. Like I say, I need to see the document.

17 MS. OKEREKE: Defendants introduce into evidence
18 what's been marked as Defendants' Exhibit L-3.

19 (Defendants' Exhibit L-3 received in evidence)

20 Q. Who prepared this DD5, Detective Agostini?

21 A. I did.

22 Q. And when was this DD5 created?

23 A. February 27, 2001.

24 Q. What does this DD5 indicate?

25 A. It's an interview with Chris Tartone.

86IMMANT

Agostini - cross

1 Q. Can you please read that DD5 for the jury.

2 A. Yes. On February 27, 2001, at approximately 2205 hours,
3 Detective DeLeo and the undersigned interviewed Chris Tartone.
4 It has his date of birth and where he lives. He stated Officer
5 Manganiello came to his pizza shop, it's called pizza place,
6 and he was asking people if they were selling a gun. Chris
7 stated Officer Manganiello had a gun book in his hand. Chris
8 states a friend of his named Mike Booth told him that the
9 Officer Manganiello asked him if he was selling an illegal gun.
10 Mike then told him that he could get in a lot of trouble and
11 could get 20 to 25 years.

12 Chris states Officer Manganiello comes to the pizza
13 shop maybe once a month. Chris states Mike Booth drives a
14 white truck with tinted windows and also is the neighborhood
15 loan shark. Chris states he will be in on Thursday at around
16 12 noon. Chris Tartone wrote a statement in the above
17 incident. The undersigned showed Chris Tartone the photo book
18 consisting of white males, and he picked out Anthony
19 Manganiello as the person who went to his pizza shop and asked
20 for a gun.

21 Q. Again, that DD5 indicates that Mr. Booth was shown a photo
22 book, correct?

23 A. That's correct.

24 Q. Approximately how many photos were in the book that
25 Mr. Tartone viewed?

86IMMANT

Agostini - cross

1 A. I can only approximate. The whole book. It could be more
2 than -- I don't know. It's an approximate. Thirty photos, I
3 would say. More than 30 in the whole book.

4 Q. Thirty photos in the whole book?

5 A. Yes. I would approximate.

6 Q. And was Mr. Booth able to identify the plaintiff in that
7 book?

8 A. Yes.

9 Q. Did this affect your perception of Mr. Booth's credibility?

10 A. It wasn't Mr. Booth --

11 Q. Excuse me. Mr. Tartone.

12 A. Then I knew who he was talking about since he picked them
13 out of a book.

14 Q. Did you speak with the district attorney about your
15 conversation with Mr. Tartone?

16 A. Yes.

17 Q. When did you speak with the DA about this?

18 A. During the -- I have no specific date. Every time I
19 learned something, either the next day or whatever, I'll give
20 her a call and update her on the case.

21 Q. Did you then provide the full information regarding this
22 interview with the district attorney?

23 A. Yes.

24 Q. Did you conduct an investigation into the information or
25 any of the information received from Mr. Tartone?

86IMMANT

Agostini - cross

1 A. Yes.

2 Q. And what were the results of this version?

3 A. I believe it was one of the days, I believe it was a
4 Thursday, whatever, Chris Tartone calls me up and says that,
5 listen, Mike Booth is here. So I don't know -- I believe it
6 was me and Detective Martinez who went to the pizza shop, I
7 entered the pizza shop, and he said he just stepped out, he
8 will be right back. And when Mike Booth was coming around and
9 entered the pizza shop, he said that's him.

10 Q. Why did you choose to conduct this interview with
11 Mr. Booth?

12 A. Basically, to get his information to see if this person
13 asked him for a gun.

14 Q. What, in fact, did Mr. Booth tell you during the interview?

15 A. That Anthony Manganiello, while he was -- while Mr. Booth
16 was sitting in his car by Macy's, Anthony Manganiello
17 approached him and asked him basically sum and substance, can
18 you get me a ride, or something like that. And he says, are
19 you crazy. I've been here 20 to 25 years.

20 Q. Did you also show Mr. Booth a photo book containing
21 approximately 30 photographs?

22 A. Yes.

23 Q. Was Mr. Booth able to identify the plaintiff?

24 A. Yes.

25 Q. Did this in any way affect your perception of Mr. Booth and

86IMMANT

Agostini - cross

1 the information he had?

2 A. No.

3 Q. Did you speak with the district attorney about your
4 conversation with Mr. Booth?

5 A. Yes.

6 Q. And what did you tell the district attorney?

7 A. Basically, the sum and substance of the interview.

8 Q. In addition to these interviews that you conducted of these
9 activities, please explain for the jury some of the other
10 activities that you conducted as a part of this investigation.

11 A. I can't even remember, it was so much. I can't remember.

12 Q. Did you yourself conduct canvassing?

13 A. I did canvassing, I did interviewing of Parkchester police
14 officers. I really can't remember what else.

15 Q. And why did you conduct these actions?

16 A. Basically, if you get any information on what happened on
17 this homicide.

18 Q. Is this a part of your duty as a detective?

19 A. Yes.

20 Q. Did you testify before the grand jury in this matter?

21 A. Yes.

22 Q. And when you testified before the grand jury did you tell
23 the grand jury the truth?

24 A. Yes.

25 MS. OKEREKE: Your Honor, defendants introduce into

86IMMANT

Agostini - cross

1 evidence portions of Defendants' Exhibit C.

2 (Defendants' Exhibit C received in evidence)

3 THE COURT: Are those the minutes?

4 MR. JOSEPH: I believe they are already in evidence as
5 Exhibit 38.

6 MS. OKEREKE: They are. Plaintiff's Exhibit 38.

7 Q. What is it that is Defendants' Exhibit C and Plaintiff's
8 Exhibit 38 that you are being shown?

9 A. It's grand jury minutes.

10 Q. And during the grand jury did you give or did you answer
11 questions?

12 A. Yes.

13 Q. Detective Agostini, I now ask if you could read your grand
14 jury testimony.

15 THE COURT: The whole testimony. How many pages?

16 MS. OKEREKE: It's a very few pages. It's four pages
17 there.

18 THE COURT: It seems to me if it's in evidence, the
19 jury can ask for it and they will get it. We really would like
20 to move along.

21 MS. OKEREKE: Your Honor, the grand jury testimony,
22 what was presented at the grand jury is crucial and defendants
23 would like that read into evidence and read into the record.

24 THE COURT: Did you get my drift? Did you understand
25 what I was saying?

86IMMANT

Agostini - cross

1 MS. OKEREKE: Yes, your Honor.

2 THE COURT: If you have a few lines, you can read
3 them. If you don't and you have four pages, the jury will have
4 the opportunity to study them at length.

5 MS. OKEREKE: Yes, your Honor. I will choose a few
6 portions of the transcript.

7 Q. Detective Agostini, if you could please read for the jury
8 the first page of your transcript, the grand jury testimony.

9 A. First page?

10 Q. Yes.

11 A. Ms. Scaccia, the people are now calling Detective Luis
12 Agostini.

13 Detective Luis Agostini, after having been duly sworn,
14 testified as follows: Examination by Ms. Scaccia.

15 "Q. Detective, can you please state your name, rank, and
16 shield number for the members of the grand jury?

17 "A. Detective Luis Agostini, shield No. 1230, 43 detective
18 squad.

19 "Q. Detective, how long have you been with the 43 detective
20 squad?

21 "A. For approximately four years.

22 "Q. Detective, I want to direct your attention to February 12
23 of this year. Were you working as a member of the 43rd
24 Precinct detective squad?

25 "A. Yes.

86IMMANT

Agostini - cross

1 "Q. And did you have an occasion on that day to become
2 assigned to an investigation into the death of Albert Acosta?

3 "A. Yes. Now I direct your attention --"

4 Q. When you testified during the grand jury did you testify
5 generally to your duties as a case detective?

6 A. Yes.

7 Q. Again, did you tell the truth during that grand jury
8 hearing?

9 A. Yes.

10 Q. Have you testified in other matters related to
11 Mr. Manganiello?

12 A. Yes.

13 Q. In what capacity?

14 A. I believe -- I am not sure if it was a hearing or trial.

15 Q. So you've given quite a bit of testimony in this matter
16 over the last seven years?

17 A. Yes.

18 MR. JOSEPH: Objection, leading.

19 Q. Did you tell the truth?

20 THE COURT: Overruled.

21 Q. Did you tell the truth to the best of your memory when you
22 gave testimony during the pretrial hearing?

23 A. Yes.

24 Q. Which occurred --

25 MR. JOSEPH: Judge. Doesn't the jury decide?

86 IMMANT

Agostini - cross

1 THE COURT: I'll allow it. Are we close to the end
2 here?

3 MS. OKEREKE: Yes. Just approximately five to six
4 more questions, your Honor.

5 THE COURT: I'll allow it. Almost anything.

6 Q. To repeat the question, did you tell the truth to the best
7 of your memory when you gave testimony during the pretrial
8 hearing which, again, occurred three years after the homicide?

9 A. Yes.

10 Q. Did you tell the truth to the best of your memory when you
11 gave testimony during the criminal court trial which, again,
12 occurred almost three years after the homicide?

13 A. Yes.

14 Q. And did you tell the truth to the best of your memory when
15 you gave testimony during your deposition which occurred almost
16 seven years after the homicide?

17 A. Yes.

18 Q. Again, how many investigations have you been involved with
19 during your time with NYPD?

20 MR. JOSEPH: Objection. Asked and answered.

21 THE COURT: It was on your examination. She gets her
22 own opportunity.

23 Q. How many investigations was that, Detective Agostini?

24 A. It's over a thousand.

25 Q. Mr. Agostini, did you know Anthony Manganiello before your

86IMMANT

Agostini - cross

1 involvement with the Acosta or the investigation into the
2 murder of Albert Acosta?

3 A. No.

4 Q. Did you ever urge the assistant district attorney to
5 present this case to a grand jury?

6 MR. JOSEPH: Objection.

7 THE COURT: Sustained. You're over your limit.

8 MS. OKEREKE: Two more questions, your Honor.

9 Q. Did you ever persuade the assistant district attorney to
10 prosecute Anthony Manganiello?

11 MR. JOSEPH: Objection.

12 THE COURT: Sustained.

13 MS. OKEREKE: Finally, your Honor, defendants would
14 just enter into evidence the remaining DD5s which have yet to
15 be entered into evidence, which I can read if your Honor
16 requires.

17 THE COURT: We will just get a list later.

18 MR. JOSEPH: For the record, Judge, we stated the
19 objections that were previously stated.

20 MS. OKEREKE: Defendants have no more questions.

21 THE COURT: Any redirect?

22 MR. JOSEPH: Yes, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. JOSEPH:

25 Q. Sir, according to Exhibit F-8, Mr. Alston told you that

86IMMANT

Agostini - redirect

1 this conversation with Mr. Manganiello occurred in August of
2 2000, correct?

3 A. It happened in September of 2000.

4 Q. There is one DD5 Mr. Alston says September of 2005?

5 A. 2000.

6 Q. 2000, you're correct. And in one DD5 Mr. Alston says this
7 conversation occurred in August 2000, right?

8 A. I have to look.

9 Q. Look at Exhibit 22 and you look at F-8 together.

10 A. Yes.

11 Q. He is giving different dates for this conversation
12 occurring, is that correct?

13 A. That's correct.

14 Q. Also, sir, you tried to verify whether Mr. Manganiello was
15 in fact involved with any woman that Mr -- strike that.

16 Sir, you tried to verify whether Mr. Manganiello and
17 Mr. Acosta were involved with any of the same women, correct?

18 A. Yes.

19 Q. That turned out to be false?

20 A. Yes.

21 Q. You interviewed Ms. Acosta's girlfriend?

22 A. Yes.

23 Q. Did she indicate to you that there was no romantic
24 involvement between herself and Mr. Manganiello?

25 A. That's correct, there was no romantic --

86IMMANT

Agostini - redirect

1 Q. The information that Mr. Alston gave you was incorrect,
2 correct?

3 A. Sir, that was February. I don't know what happened back in
4 September.

5 Q. Sir, did this girlfriend ever indicate to you that she had
6 ever been involved romantically with Mr. Manganiello?

7 A. That's correct.

8 Q. Sir, Mr. Alston was never able to produce a key he says the
9 plaintiff gave him, right?

10 A. I believe he gave that to Ramos. Detective Ramos did that
11 DD5 on the key. He never indicated anything to me about a key.

12 Q. Sir, is it not true that Mr. Alston never produced a key,
13 right?

14 A. That's correct.

15 Q. We are clear, he never produced a key that Anthony
16 Manganiello gave him?

17 A. Not that he told me.

18 Q. You were the only detective on this case, right?

19 A. Yes.

20 Q. If there was a key produced, you would know about it?

21 A. If he would tell me, yes, if he would tell me.

22 Q. The fact is, sir, you have no knowledge of Mr. Alston ever
23 producing such a key, right?

24 A. That's correct.

25 Q. Also, sir, you testified about some photo books which

86IMMANT

Agostini - redirect

1 Mr. Booth and Mr. Alston picked Anthony Manganiello out of.

2 What happened to those photo books?

3 A. They were with the case file.

4 Q. They disappeared, too?

5 A. Yes.

6 Q. Now, you said that Alston gave you the right person who was
7 Johnny Damon, right?

8 A. Correct.

9 Q. I'm sorry. Mark Damon.

10 A. You say he gave me. He gave the DA's office the right
11 person.

12 Q. You say that Mr. Damon was the right person, correct?

13 A. Yes.

14 Q. Mr. Damon was also lying, right?

15 A. Yes.

16 Q. And Mr. Alston was forcing this right person to lie, right?

17 MS. OKEREKE: Objection, your Honor.

18 THE COURT: Maybe you can rephrase it.

19 MR. JOSEPH: I will.

20 Q. Sir, wasn't the information that you had that Mr. Alston
21 was forcing Mr. Damon to lie to falsely implicate Anthony
22 Manganiello?

23 MS. OKEREKE: Objection, your Honor.

24 THE COURT: I'll allow it.

25 A. I don't know what you mean by forcing. I know in sum and

86IMMANT

Agostini - redirect

1 substance he told him to lie for. I don't know if force is the
2 right word.

3 Q. He asked Damon to lie about Anthony Manganiello, correct?

4 A. Correct.

5 Q. Sir, was it fair to say that you conveyed the information
6 that Alston gave you to the DA, correct?

7 A. Which information?

8 Q. All of the information -- did you convey all of the
9 information which Mr. Alston gave you to the ADA?

10 A. With the information he gave me I gave it to the ADA's
11 office.

12 Q. And you also told the ADA that he wants to get out of jail
13 to get me another witness, correct?

14 A. I let her know that, yes.

15 Q. And without you, Mr. Alston never would have gotten out of
16 jail, correct?

17 MS. OKEREKE: Objection, your Honor.

18 THE COURT: If he knows, he can answer.

19 MS. OKEREKE: Speculation.

20 A. No, sir, I had nothing to do with him getting out of jail.

21 Q. Mr. Tartone and Mr. Booth were friends, correct?

22 A. That's where Mr. Tartone say.

23 Q. Sir, if we direct your attention to L-3, did Mr. Tartone
24 say this loan shark would be at his business on Thursday,
25 right?

86IMMANT

Agostini - redirect

1 A. That's correct.

2 Q. So this loan shark came to his business on somewhat of a
3 regular occurrence, correct?

4 A. I don't know if he's a regular. It doesn't say that he
5 comes there regular.

6 Q. But Mr. Tartone knew when this guy would be at his
7 business, correct?

8 A. That day, yes.

9 Q. That's because Mr. Tartone was in fact involved in
10 Mr. Booth's loan sharking operations, correct?

11 MS. OKEREKE: Objection, your Honor.

12 THE COURT: If you know the answer --

13 A. I do not know anything about Mr. Tartone and any loan
14 sharking operation.

15 Q. Sir, is it also true that Mr. Alston never told you that he
16 was hired or he was asked to kill another security officer?

17 MS. OKEREKE: Objection, your Honor.

18 THE COURT: Overruled.

19 A. Say it again, please.

20 Q. Sure. Sir, the first time you met Mr. Alston, did
21 Mr. Alston tell you that he was approached by a Parkchester
22 security guard for a gun that he wanted to kill another
23 security guard?

24 MS. OKEREKE: Objection, your Honor. Again, these
25 questions have been asked.

86IMMANT

Agostini - redirect

1 THE COURT: Not only that, but I think this portion of
2 the defendants' motion in limine was granted. I think we are
3 finished with Mr. Alston.

4 MR. JOSEPH: That is fine, Judge. That's all I have,
5 your Honor. Thank you.

6 THE COURT: Any other recross?

7 MS. OKEREKE: No, your Honor.

8 THE COURT: You're excused. Thank you very much.

9 (Witness excused)

10 (Continued on next page)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

86 IMMANT

Agostini - redirect

1 THE COURT: Who is next?

2 MR. JOSEPH: Judge, we call Shawn Abate.

3 SHAWN ABATE,

4 called as a witness by the Plaintiff,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. JOSEPH:

8 Q. Mr. Abate, on February 12, 2001, were you employed by the
9 City of New York?

10 A. Yes, I was.

11 Q. And were you employed as a detective with the New York City
12 Police Department?

13 A. Yes, I was.

14 Q. On February 12, 2001, did you become involved in the
15 investigation into the shooting of Albert Acosta?

16 A. Yes.

17 Q. And do the detectives involved in an investigation of a
18 shooting work as a team?

19 A. Yes.

20 Q. And was Luis Agostini part of your team on that date?

21 A. Yes, he was.

22 Q. Sir, on February 12, 2001, did you respond to 1700
23 Metropolitan Avenue?

24 A. Yes, I did.

25 Q. And did you respond with Mr. Agostini?

86IMMANT

Abate - direct

1 A. I believe I responded with Detective Martinez.

2 Q. Sir, when you responded was there a radio transmission that
3 identified the victim as a security officer?

4 A. I'm sorry, sir. Could you say that again?

5 Q. Sure. Was there a transmission that identified the victim
6 as a Parkchester security officer?

7 A. I don't remember any transmission, sir.

8 Q. Sir, I show you what's been marked in evidence as Exhibit
9 11. I will ask you if this jogs your memory.

10 A. This is a Sprint report.

11 Q. Sir, what is a Sprint report?

12 A. It's a paper copy of radio transmissions from 9/11.

13 Q. And are they also a paper copy of radio transmissions that
14 are placed from central dispatch to the officers?

15 A. Yes, sir.

16 Q. And does that document reflect the radio transmissions that
17 were placed over the air on February 12, 2001 to the responding
18 officers?

19 A. This is to the sector car, to the uniform car.

20 Q. It's something -- sir, on February 12, 2001, could you hear
21 what was being relayed to the sector cars?

22 A. I don't remember hearing that, sir, no.

23 THE COURT: That's not the question.

24 A. Repeat the question, please.

25 Q. Sir, did you have a NYPD radio on February 12, 2004?

86IMMANT

Abate - direct

1 A. Yes, I did.

2 Q. And was it on the same frequency as the sector cars?

3 A. Yes.

4 Q. And did you have the capacity and ability to hear what was
5 being relayed to the sector cars on February 12, 2001?

6 A. I don't know if I understand that question, sir.

7 THE COURT: Could you have heard it if you were
8 listening?

9 THE WITNESS: Yes.

10 Q. Sir, what, if anything, according to Exhibit 11, was put
11 over the radio to the sector cars concerning the call at 1700
12 Metropolitan Avenue?

13 MS. OKEREKE: Objection, your Honor.

14 THE COURT: Overruled.

15 A. Repeat that question, please.

16 THE COURT: Or rephrase it.

17 Q. Sir, what, if anything, does Exhibit 11 show was broadcast
18 from central dispatch over the radio to the sector cars
19 concerning 1700 Metropolitan Avenue?

20 MS. OKEREKE: Objection, your Honor.

21 THE COURT: It is over the objection of the defendant.
22 You wanted to read it. I suppose you could read it if that
23 would make you feel better.

24 MS. OKEREKE: No foundation --

25 THE COURT: Enough foundation for me.

86IMMANT Abate - direct

1 Q. What information was relayed, sir?

2 A. You want me to read from the Sprint report?

3 Q. Correct.

4 A. 1034 shots/IN, unknown condition. 1700 Metropolitan Oval.

5 Would you like me to continue?

6 Q. Please.

7 A. At 0829 it says, yelling at location, double ASTS,
8 718-824-5521, 1700 Metropolitan Avenue, floor 5, apartment 5E,
9 Bronx operator 2363C69; 1019, previous incident code 1010, H1.
10 It says, 1020, security guard shot in head.

11 Q. Can you repeat that one sentence?

12 A. 1020, SEC guard shot in the head.

13 Q. Is that what was placed over the radios from central to the
14 sector cars?

15 MS. OKEREKE: Objection, your Honor.

16 THE COURT: Overruled.

17 A. According to this Sprint report, yes.

18 Q. Sir, did you testify at a hearing on June 21, 2004?

19 A. I don't remember, sir.

20 Q. Sir, let me ask you, on page 366, line 14, were you asked
21 these questions and did you give these answers:

22 "Q. When you leave your precinct to go there, do you have any
23 idea whether this man is a civilian, officer, an NYPD officer?
24 Do you know any of that?

25 "A. We did not know at the time, no, ma'am."

86 IMMANT

Abate - direct

1 Did you give that testimony?

2 A. I'd like to see it, please.

3 Q. Sure.

4 A. What line was that, sir?

5 Q. Page 366, lines 14 through 17.

6 A. That was the question and my answer, yes, sir.

7 Q. Sir, on February 12, 2001, when you arrived at the scene,
8 were you what's known as the lead detective?

9 A. At that time, yes, sir.

10 Q. What's a lead detective?

11 A. I was assigned the case because it was a nonfatal shooting
12 at the time.

13 Q. What responsibilities, if any, did you have at the time?

14 A. I basically ran the investigation at the crime scene.

15 Q. When you got to the scene were there Parkchester officers
16 already on site?

17 A. I believe so, yes, sir.

18 Q. And, sir, did you have a spiral notebook that you used to
19 take notes?

20 A. Yes, sir.

21 Q. And did you do a canvass?

22 A. I did a canvass as well, yes.

23 Q. And did you take down notes of who you interviewed and what
24 was said in the spiral notebook?

25 A. Yes.

86IMMANT

Abate - direct

1 Q. And did you give that spiral notebook to Mr. Agostini?

2 A. Once the case was reassigned to him, yes, sir.

3 Q. And after you gave it to Mr. Agostini, did you ever see it
4 again?

5 A. No, sir.

6 Q. Do you know what happened to that spiral notebook?

7 A. Do I know what happened to it, no, sir.

8 Q. And did you ever learn that the spiral notebook went
9 missing?

10 A. Yes, sir.

11 Q. Do you have any explanation for why your notes went
12 missing?

13 A. No, sir.

14 Q. Did you ever give the Assistant district attorney hard
15 copies of your handwritten notes -- did you ever give the
16 Assistant district attorney copies of the handwritten notes
17 which you took before the memo book went missing?

18 A. I don't remember giving the district attorney my copies,
19 no, sir.

20 THE COURT: Did you give anybody copies?

21 THE WITNESS: When the case was reassigned to
22 Detective Agostini, the notes went with the case.

23 THE COURT: The spiral notebook?

24 THE WITNESS: Not the entire notebook. As I took
25 notes I would rip them out and they would go to the case file.

86IMMANT

Abate - direct

1 THE COURT: You never made a copy?

2 THE WITNESS: No, sir.

3 Q. Sir, while you were on the scene at 1700 Metropolitan
4 Avenue, did you ever interview a Richard Huello, a Verizon
5 employee?

6 A. I don't believe I did, no.

7 Q. Sir, you gave a deposition approximately two months ago,
8 right?

9 A. I believe I did, yes, sir.

10 Q. And, sir, were you asked these questions in your deposition
11 and did you give these answers, page 15:

12 "Q. What information, if any, did you learn at the scene as a
13 result of the canvass?

14 "A. I don't remember.

15 "Q. Did you speak with a Verizon employee named Richard
16 Huello?

17 "A. Yes, I did."

18 I'll show it to you, if you'd like, sir.

19 A. Thank you. Yes, I gave that answer to that question.

20 Q. Two months ago you spoke with Richard Huello. Two months
21 ago you had a memory of speaking to Richard Huello, is that
22 correct?

23 A. I was present for that interview, yes, sir.

24 Q. And today do you have a recollection of speaking with
25 Mr. Huello?

86IMMANT

Abate - direct

1 A. I was present for the interview with Mr. Huello, I believe,
2 yes.

3 Q. Was Mr. Huello working close to where Mr. Acosta was found?

4 A. Yes.

5 Q. And, sir, did you speak with any officers to verify whether
6 plaintiff was on call at 1700 Metropolitan Avenue on the
7 morning of February 12, 2001 at apartment 5E?

8 A. I don't remember that, sir.

9 MR. JOSEPH: I would like to introduce Exhibit 17. I
10 believe there is no objection to move 17 into evidence, if it
11 please the Court.

12 (Plaintiff's Exhibit 17 received in evidence)

13 Q. I am going to show you what's been marked as Exhibit 17.
14 Do you recognize this?

15 A. Yes, I do.

16 Q. And is this a document that you created?

17 A. Yes, it is.

18 Q. When did you create this document?

19 A. On February 12, 2001.

20 Q. Sir, is this a request for information to the intelligence
21 department?

22 A. To the gang intelligence, yes.

23 Q. By the way, is there a Detective Parker who was assigned to
24 that, to intelligence?

25 A. I'm sorry, sir?

86IMMANT

Abate - direct

1 Q. Are you aware of a Detective Parker who is assigned to the
2 intelligence unit?

3 A. I don't remember that, sir.

4 Q. Sir, on February 12, 2001, I see here a note saying
5 negative results, Anthony Manganiello, is that correct?

6 A. That is correct.

7 Q. What is the significance of that?

8 A. That means that Anthony Manganiello was not listed in their
9 computer program as a gang member.

10 Q. It also means that the intelligence division on February
11 12, 2001 had no information whatsoever concerning Anthony
12 Manganiello, correct?

13 A. Regarding gangs, yes, sir.

14 Q. The same is true with Albert Acosta, correct?

15 A. That is correct.

16 Q. Sir, on February 12, 2001, while you were at the scene, was
17 Anthony Manganiello a suspect for the shooting of Albert
18 Acosta?

19 A. While at the scene, no, sir.

20 Q. Sir, did you direct any officers to bring Anthony
21 Manganiello back from the scene to the 43rd Precinct?

22 A. I don't remember that, sir.

23 Q. By the way, when you left the scene, at the point in time
24 when you left the scene of 1700 Metropolitan Avenue on February
25 12, 2001, what information, if any, was known that tied Anthony

86IMMANT

Abate - direct

1 Manganiello to the shooting of Albert Acosta?

2 A. I don't remember, sir.

3 Q. Did you see Anthony Manganiello at the precinct?

4 A. On February 12, yes, sir.

5 Q. And how did he get there?

6 A. I believe uniformed patrol brought him in.

7 Q. When you brought Anthony Manganiello into an interview
8 room, was he a suspect?

9 A. When I got to the precinct, Mr. Manganiello was already in
10 our lunchroom area.

11 Q. At the point in time you arrive at the lunchroom area, was
12 Anthony Manganiello a suspect for the shooting of Albert
13 Acosta?

14 A. No, sir.

15 Q. By the way, on the way back from the precinct -- strike
16 that.

17 In route from the scene of the Acosta shooting to the
18 precinct, did you learn what information, if any, Walter Cobb
19 had provided?

20 A. I don't remember that, sir.

21 Q. Now, sir, at the point in time that you arrived at the
22 precinct, isn't it true you were not aware of any evidence
23 which in any way connected Anthony Manganiello to the shooting
24 of Albert Acosta?

25 A. That's correct.

86IMMANT

Abate - direct

1 Q. And at that point in time when you arrived is it true that
2 you already knew what information, if any, Walter Cobb had
3 provided?

4 A. I don't remember that, sir.

5 Q. Sir, let me ask you to take a look at your hearing
6 testimony from four years ago, June 21, 2004, page 376. I'll
7 direct your attention to line 20. I am going to ask you if
8 this refreshes your recollection.

9 A. I don't remember giving the answer, but it is in the
10 minutes here, sir.

11 Q. I'll tell you what, sir. Since you have it in front of
12 you, can you read page 376, line 20 to 25?

13 A. 20 to 25?

14 Q. Yes.

15 A. "QUESTION: Prior to speaking to Mr. Manganiello were
16 you -- you knew who Mr. Cobb was?

17 "A. Yes.

18 "Q. And were you briefed as to what information Mr. Cobb had
19 given the other detectives?

20 "A. Yes, ma'am."

21 Q. Those were your words, right, four years ago?

22 A. Yes, sir.

23 Q. So at the point in time you speak with Anthony Manganiello
24 you know what Walter Cobb has to say, correct?

25 A. According to my testimony at this date, yes, sir.

86IMMANT

Abate - direct

1 Q. And you also considered at that point in time that whatever
2 Walter Cobb had to say didn't connect Anthony Manganiello to
3 the shooting of Albert Acosta, isn't that correct?

4 A. I'm sorry, sir. Could you say that again?

5 Q. Sure. Sir, isn't it true that on February 12, 2001, it was
6 your opinion that whatever information Walter Cobb had provided
7 did not connect Anthony Manganiello to the shooting of Albert
8 Acosta?

9 MS. OKEREKE: Objection, your Honor.

10 THE COURT: I'll allow it. You can answer.

11 A. I don't remember that, sir.

12 Q. Sir, did you testify that on page 372 of the hearing
13 testimony, line 20 that at the point in time you arrived at the
14 precinct there was no reason to believe that plaintiff was in
15 any way involved in the shooting of Albert Acosta?

16 A. What line was that, sir?

17 Q. 372, line 20.

18 A. Again, your question is?

19 Q. Did you state that the point in time that you arrived at
20 the precinct on February 12, 2001, there was no reason to
21 believe that plaintiff was in any way involved in the murder of
22 Acosta? Didn't you say that under oath four years ago?

23 A. Yes, sir.

24 Q. And, sir, on February 12, 2001, did you speak with Anthony
25 Manganiello at the precinct?

86IMMANT

Abate - direct

1 A. Yes, we did.

2 Q. And was Mr. Agostini with you during this interview?

3 A. Yes, he was.

4 Q. Anyone else with you?

5 A. I don't believe so, sir.

6 Q. When you spoke with Anthony Manganiello, was he under
7 arrest?

8 A. No, he wasn't.

9 Q. Was Anthony Manganiello arrested at any point on February
10 12, 2001?

11 A. He was placed in a cell and a voided arrest was done.

12 Q. Was he arrested?

13 A. Not by me.

14 Q. By who?

15 A. I don't know.

16 Q. Sir, you were the lead investigator on this file, up until
17 the time that Detective Agostini took it over?

18 A. That is correct.

19 Q. Was he placed in the cell while you were lead investigator?

20 A. Not by me, no, sir.

21 Q. By who?

22 A. I don't know if he was placed in a cell.

23 Q. You don't know if he was placed in a cell?

24 A. What time frame are you talking about, sir?

25 Q. On February 12, 2001, at any point was Anthony Manganiello

86IMMANT

Abate - direct

1 placed in a cell?

2 A. Yes.

3 Q. At the point in time when he was placed in the cell was he
4 under arrest?

5 A. I'm sorry. Was he --

6 Q. Was he under arrest when he was placed in a cell?

7 A. I can't answer that, sir. I did not put him in a cell. I
8 did not arrest him when I was the lead investigator.

9 THE COURT: It's a little different question. You
10 want to try your hand again.

11 MR. JOSEPH: Yes, your Honor.

12 Q. Sir, was Mr. Manganiello arrested while you were still the
13 lead investigator, or when Mr. Agostini became the lead
14 investigator?

15 A. I can speak -- I can speak only when I was the lead
16 investigator. He was not arrested when I was the lead
17 investigator.

18 Q. Was he at any time placed in a cell when you were the lead
19 investigator?

20 A. No.

21 Q. Was Anthony Manganiello placed in a cell after Mr. Agostini
22 became the lead investigator on February 12, 2001?

23 A. I had seen him in the cell on February 12, 2001, yes.

24 Q. At the point in time when you saw him in the cell, who was
25 the lead investigator --

86IMMANT

Abate - direct

1 MS. OKEREKE: Objection, your Honor.

2 Q. -- on February 12, 2001?

3 THE COURT: If he knows, he can answer.

4 A. It was Detective Agostini.

5 Q. Does that mean it was Detective Agostini's decision to put
6 Anthony Manganiello in the cell on February 12, 2001?

7 MS. OKEREKE: Objection, your Honor.

8 THE COURT: Overruled.

9 A. I didn't hear that fully.

10 Q. Does that mean that it was Detective Agostini's decision to
11 put Anthony Manganiello in the cell on February 12, 2001?

12 A. No.

13 Q. Sir, did you testify at a pretrial hearing on June of 2004
14 that you asked Anthony Manganiello where he lived and he
15 responded he doesn't remember?

16 A. I'd have to see some documentation, sir.

17 Q. Do you still have the hearing transcript in front of you?

18 A. Yes, sir.

19 Q. Can you turn to page 373.

20 A. What line, sir?

21 Q. 14 to 17.

22 A. 373, 14 --

23 Q. 373, line 14 to 17.

24 A. Okay.

25 Q. Did you testify that Anthony Manganiello was evasive to

86IMMANT

Abate - direct

1 questioning on February 12, 2001?

2 A. Yes, I testified to that.

3 Q. Did you also testify that you asked him where he lived and
4 he said he didn't remember, is that correct?

5 A. What line is that on, sir?

6 Q. Take a look between page 373 and 374. Did you give that
7 testimony?

8 A. Your question, sir?

9 Q. Sir, at the pretrial hearing, did you testify that Anthony
10 Manganiello was asked his address and responded I don't know?

11 A. Can you tell me what line that's on, regarding his address?

12 Q. Did you testify at the pretrial hearing on page 374 between
13 line 12 and 19 that when asked what his phone number was, he
14 said it's unlisted?

15 A. That is correct.

16 Q. Sir, when you questioned Anthony Manganiello, did you take
17 any handwritten notes of what he said?

18 A. I don't believe I did, sir, no.

19 Q. And you told the assistant district attorney about this
20 conversation you had with Anthony Manganiello, correct?

21 A. I don't remember if I told the district attorney.

22 Q. Sir, did you consider Anthony Manganiello a suspect because
23 he was evasive to your questioning?

24 A. No, sir.

25 Q. You didn't. Sir, can you turn to page 377. And between

86IMMANT

Abate - direct

1 lines 20 to line 17 on the following page, did you testify that
2 you considered him a suspect because he was evasive to your
3 questioning?

4 A. What it states is that my suspicion had raised a bit. It
5 doesn't say anything about him being a suspect.

6 Q. Did you testify at the trial hearing that your suspicion
7 about Anthony Manganiello's involvement in the Acosta murder
8 was raised because he was evasive in questioning? Is that
9 fair?

10 A. Not only because he was evasive to the simple questions we
11 were asking him.

12 Q. Was that one of the factors?

13 A. That was one of the factors, certainly.

14 Q. Sir, did you take possession of Anthony Manganiello's memo
15 book?

16 A. I did, yes, sir.

17 Q. Well, sir, did you ever deny under oath taking possession
18 of the memo book?

19 A. I don't remember that, sir.

20 Q. How about at your deposition about two months ago. I'll
21 refer you to page 26, lines 24 to line 1 on the following page.
22 Read that for me, sir.

23 A. You said read it?

24 Q. Yes.

25 A. Question: Sir, do you recognize what has been marked as

86IMMANT

Abate - direct

1 Exhibit 1?

2 Q. Reading page 26, line 24.

3 A. That's what I'm reading. 26, line 24?

4 Q. I'll find it, sir. Page 26, line 24. Can you read that
5 for us, please?6 A. "QUESTION: Did you keep Mr. Manganiello -- take possession
7 of Mr. Manganiello's memo book?"

8 Q. And the answer was?

9 A. I didn't.

10 Q. And did you give that testimony under oath?

11 A. Yes, I did.

12 Q. That was two months ago, right?

13 A. That was correct before I had a chance --

14 THE COURT: That's when it was, two months ago?

15 THE WITNESS: It was two months ago, yes.

16 Q. You were given a copy of this deposition to review, is that
17 correct?

18 A. Correct.

19 Q. There was something called an errata sheet that you --

20 MS. OKEREKE: Objection.

21 THE COURT: Overruled.

22 Q. You were given an errata sheet to make changes if anything
23 in your testimony was inaccurate?

24 A. I don't remember that.

25 Q. Did you also make a copy of Anthony Manganiello's memo

86IMMANT

Abate - direct

1 book?

2 A. I would need some documentation for that, sir.

3 Q. How about page 530 of your trial testimony, line 3.

4 THE COURT: What's the page?

5 MR. JOSEPH: 530, your Honor, line 3.

6 Q. Sir, did you make copies of Mr. Manganiello's memo book?

7 A. According to my testimony, yes, sir.

8 Q. What happened to those copies?

9 A. They were with the case file.

10 Q. Did they go missing also?

11 A. Yes, sir.

12 Q. Now, on February 12, 2001, did crime scene come and take

13 pictures of Anthony Manganiello?

14 A. I would need some documentation for that, sir.

15 Q. Why don't you take a look at page 530, lines 16 through 22.

16 A. What line, sir?

17 Q. 16 through 22.

18 A. Pictures were taken by crime scene, too.

19 Q. Those picture were lost, too, right?

20 A. I believe so.

21 Q. Did you take possession of Anthony Manganiello's jacket?

22 A. His jacket was taken off him, yes, sir.

23 Q. It was taken off of his physical person?

24 A. I asked him to remove and he removed it, gave it to me.

25 Q. Sir, did you ever testify that you came into possession of

86IMMANT Abate - direct

1 this jacket differently?

2 A. I don't know, sir.

3 Q. Why don't you take a look at your deposition, page 25, line
4 24.

5 A. Page 25, is it?

6 Q. Correct.

7 A. Line 24?

8 Q. Correct. Sir, did you testify that Mr. Manganiello was on
9 a chair outside of the interview room and that's where you got
10 it?

11 A. That's what my deposition says, yes, sir.

12 THE COURT: You keep saying that's what it says here.
13 Do you have any question that you gave that testimony?

14 THE WITNESS: This was prior to me being able to view
15 any paperwork from seven years ago.

16 THE COURT: All I'm talking about is the under oath
17 statements in the deposition or the trial and you keep on
18 saying, being equivocal about it, as maybe you didn't say it.
19 We are not saying you didn't get more information later. I
20 just want to be sure that's what you actually said.

21 THE WITNESS: That's what my testimony states.

22 THE COURT: You don't have any doubt that you
23 testified to that?

24 THE WITNESS: There is no doubt in that, sir.

25 Q. Mr. Manganiello had a Band-Aid on his fingers, correct, on

86IMMANT

Abate - direct

1 February 12, 2001?

2 A. I believe so, yes.

3 Q. Did you order that Band-Aid to be tested?

4 A. I don't remember if I ordered that, sir.

5 Q. If you take a look at your deposition, page 30, does that
6 refresh your recollection, lines 1 through 14?

7 A. That's what I said in my deposition, yes, sir.

8 Q. That was two months ago, right?

9 A. That was about two months ago.

10 Q. By the way, was plaintiff's shirt removed from him on
11 February 12, 2001, while he was in this interview room?

12 A. I believe it was given to us, yes.

13 Q. And it was taken off of his body, correct?

14 A. I believe he took it off his body, yes, sir.

15 Q. Sir, on February 12, 2001, did you receive a call from a
16 lawyer on Mr. Manganiello's behalf?

17 A. I didn't receive a call, no, sir.

18 Q. Sir, was there information related to you that an attorney
19 had called on behalf of Mr. Manganiello?

20 A. I knew of the call, yes, sir.

21 Q. And at that point did you become suspicious?

22 A. Suspicious of what, sir?

23 Q. Sir, did you become suspicious because a lawyer called on
24 behalf of Anthony Manganiello?

25 A. It raised my suspicion a little bit.

86IMMANT

Abate - direct

1 Q. May I have your deposition, sir?

2 A. Yes.

3 Q. Sir, it concerned you, did it not, that an attorney showed
4 up, right?

5 A. I wouldn't say it concerned me, no, sir.

6 Q. You wouldn't. Did you say it two months ago?

7 A. I'd have to see it, sir.

8 Q. Sir, were you asked this question and did you give this
9 answer, on page 50, line 7:

10 "Q. Did the fact that a lawyer appeared raise your suspicion
11 that Mr. Manganiello was somehow involved in the shooting of
12 Mr. Acosta?

13 "A. It concerned me."

14 A. Yes, I gave that answer.

15 Q. Sir, did the attorney say anything when he left the
16 interview room after speaking with Anthony Manganiello?

17 A. I don't remember that, sir.

18 Q. And, sir, when the attorney left the interview room, you
19 were in the vicinity, correct?

20 A. I believe I was, yes.

21 Q. And you were in close proximity to Detective Agostini,
22 correct?

23 A. That I don't remember, sir.

24 Q. But you didn't hear a lawyer ask was it intentional, right?

25 A. I don't remember that, sir.

86IMMANT

Abate - direct

1 Q. Sir, at a point in time when the attorney arrived was there
2 any probable cause to believe that Anthony Manganiello was
3 involved in Mr. Acosta's shooting?

4 A. I don't determine if there is probable cause, sir.

5 MS. OKEREKE: Objection.

6 THE COURT: Overruled.

7 Q. Sir, did you state a couple of weeks ago that you didn't
8 remember whether there was probable cause?

9 A. I'd have to see that, sir.

10 Q. Why don't you take a look at page 53, line 8.

11 A. What line, sir?

12 Q. Line 8.

13 A. Your question, sir?

14 Q. Sir, did you say two weeks ago you didn't recall -- two
15 months ago that you didn't recall whether there was probable
16 cause to believe Anthony Manganiello was involved in a shooting
17 of Albert Acosta at the point in time when a lawyer showed up?

18 A. I said I don't remember if there was probable cause at the
19 time.

20 Q. And, sir, on February 12, 2001, did you apply for a search
21 warrant for Anthony Manganiello's vehicle?

22 A. Yes, I did.

23 Q. What was the procedure for obtaining a search warrant at
24 the time?

25 A. The procedure was, I had called the district attorney, had

86IMMANT

Abate - direct

1 given him the facts that we had had, some facts that we had
2 from the case, and then the DA would determine if there was
3 probable cause enough to go in front of a judge. We went in
4 front of the judge, she explained what she had and what she
5 thought probable cause was, and the judge signed the warrant.

6 Q. What facts did you convey to the district attorney?

7 A. I don't know what facts I gave her, sir.

8 Q. Did you sign an affidavit?

9 A. I signed the affidavit, yes, sir.

10 Q. What facts, if any, were contained in an affidavit?

11 A. I don't remember that, sir.

12 Q. And that affidavit disappeared, correct?

13 A. It was with the case file, yes, sir.

14 Q. Sir, did you actually speak to the judge when you applied
15 for the search warrant?

16 A. We did go in front of the judge, yes, sir.

17 Q. You made statements as to what facts supply probable cause
18 to get a warrant, correct?

19 A. The district attorney is the one who speaks to the judge
20 regarding probable cause or not.

21 Q. Sir, don't you also make some statements in front of the
22 judge, typically?

23 A. I don't believe I made any statements, no, sir.

24 Q. But, sir, on February 12, 2001, as a result of whatever
25 paperwork that you signed, which we don't have, the judge

86IMMANT

Abate - direct

1 issued a warrant for the search of Anthony Manganiello's
2 vehicle, correct?

3 MS. OKEREKE: Objection, your Honor.

4 Mischaracterizing the testimony.

5 THE COURT: How is that?

6 MS. OKEREKE: The witness already testified that he
7 alone did not speak with the judge and he did not make the
8 determination for probable cause.

9 THE COURT: That's a mischaracterization?

10 MS. OKEREKE: That's correct.

11 THE COURT: Maybe in your book. Anyhow, maybe you can
12 rephrase it, although it's perfectly reasonable.

13 Q. Sir, based upon the affidavit which you gave the judge, did
14 the judge issue a warrant for the search of Anthony
15 Manganiello's car?

16 A. Based on my information I gave to the district attorney and
17 the information the district attorney related to the judge, the
18 judge signed and certified for the vehicle.

19 THE COURT: Did she have more than what you gave her?

20 THE WITNESS: I don't know that, sir.

21 THE COURT: How would she achieve that?

22 THE WITNESS: More information?

23 THE COURT: Than what you gave her in her affidavit.

24 THE WITNESS: I don't know.

25 THE COURT: Where do you guess it would have come from

86IMMANT

Abate - direct

1 other than the detectives on the case?

2 THE WITNESS: I think nowhere.

3 THE COURT: Me, too.

4 Q. Sir, as a result of the search of the vehicle was there any
5 evidence found that tied plaintiff to the shooting of Albert
6 Acosta?

7 A. No, sir.

8 Q. On February 12, 2001, at any point during that day was
9 there any evidence or facts made known to you that in any way
10 tied Anthony Manganiello to the shooting of Albert Acosta?

11 A. On the 12th, no, sir.

12 THE COURT: Are we coming to the conclusion of this
13 soon?

14 MR. JOSEPH: We are, your Honor.

15 Q. Sir, did you meet with Michael Booth?

16 A. On what date, sir?

17 Q. Ever.

18 A. I believe I met with Mr. Booth before on the street.

19 Q. Did you meet with -- did you meet with Mr. Booth at the
20 43rd Precinct?

21 A. I don't remember that, sir.

22 Q. Sir, do you still have your deposition in front of you?

23 A. I do, sir.

24 Q. Can you turn to page 72, line 19 to 24. Were you with
25 Detective Agostini when he interviewed Michael Booth at the

86IMMANT

Abate - direct

1 43rd Precinct?

2 A. It doesn't say anything that I was with him at the 43rd
3 Precinct.4 Q. Were you with Luis Agostini when Michael Booth was
5 interviewed?6 A. It just states that we met with him. It doesn't say
7 anything about interviewing him. I met with him with Detective
8 Agostini.

9 Q. Is meeting somehow different than interviewing him?

10 A. Sure.

11 Q. What took place at this meeting, sir?

12 A. I'm sorry?

13 Q. What took place at this meeting?

14 A. I don't remember that, sir.

15 Q. When was this meeting?

16 A. I don't remember that either.

17 Q. Was this meeting in relation to the case against Anthony
18 Manganiello?

19 A. I believe so, yes, sir.

20 Q. And were you aware that Mr. Booth was involved in
21 bookmaking and gambling when you met with him?

22 A. That was a rumor I heard.

23 Q. It was information you had, correct?

24 A. It was a rumor that I heard. I didn't have any information
25 on that.

86IMMANT

Abate - direct

1 Q. Was Mr. Booth searched in your presence?

2 A. Searched in my presence? I don't remember that, sir.

3 Q. Do you have any recollection of Mr. Agostini finding
4 gambling slips on Mr. Booth?

5 A. I'm sorry, sir. I didn't hear that.

6 Q. Do you have any recollection of Mr. Agostini as a result of
7 a search finding evidence of illegal activities on Mr. Booth's
8 person?

9 A. I don't remember that.

10 Q. Were you present when Mr. Booth was asked to write out a
11 statement?

12 A. I don't believe so.

13 Q. Sir, as part your investigation of this case did you learn
14 that Anthony Manganiello was a parks officer in Westchester?

15 A. Yes, sir.

16 Q. You also learned through part of your investigation that he
17 was licensed and authorized and in fact required to carry guns
18 as part of his job, correct?

19 A. I knew he had a pistol permit for that job, yes, sir.

20 Q. Usually, the job of a police officer requires one to carry
21 a gun, correct?

22 A. That's fair to say.

23 Q. And, sir, isn't it also true that all of the guns that
24 plaintiff owned were turned into the police department after
25 this case began?

86IMMANT

Abate - direct

1 A. I don't remember that, sir.

2 Q. Did you testify to that at trial?

3 A. I'd have to see some documentation, sir.

4 Q. Would you turn to page 533.

5 A. In the trial book?

6 Q. Yes. Line 8?

7 A. I'm sorry. What line, line 8?

8 Q. Correct. 8 through 16, specifically.

9 A. I stated in my testimony, that, yes, they were turned in.

10 Q. Sir, in April of 2001, did you rearrest Anthony
11 Manganiello?

12 A. That was the first time I arrested him.

13 Q. In April 2001, did you arrest Anthony Manganiello because
14 you had a search warrant?

15 A. I had a search warrant, no, sir.

16 Q. An arrest warrant.

17 A. We had authorization from the Bronx DA's office.

18 Q. Sir, April 2001 did you have a warrant for Anthony
19 Manganiello's arrest?

20 A. We had authorization from the Bronx DA's office.

21 Q. Did you have an arrest warrant, yes or no?

22 A. In my mind, yes, we did.

23 Q. And, sir, who supplied the information to get that arrest
24 warrant?

25 A. I believe it was Luis Agostini.

86IMMANT

Abate - direct

1 Q. Did you supply some of the information to get the arrest
2 warrant?

3 A. I'm sorry, sir?

4 Q. Did you supply some of the information to obtain that
5 arrest warrant?

6 A. I don't remember if I did.

7 THE COURT: I don't think it's been established that
8 there actually was an arrest warrant myself.

9 Q. Did you testify that in your deposition on page 77 that you
10 did have an arrest warrant?

11 A. What line, sir?

12 Q. Line 25.

13 A. Yes, I did.

14 Q. Was that true?

15 A. We had authorization to arrest Mr. Manganiello from the
16 Bronx DA's office.

17 Q. Did you have an arrest warrant for Anthony Manganiello's
18 arrest in April of 2001?

19 MS. OKEREKE: Objection, your Honor.

20 THE WITNESS: I don't understand what he's asking.

21 THE COURT: Overruled.

22 A. I don't understand what you're asking.

23 Q. Do you know what an arrest warrant is?

24 A. Yes, I do.

25 Q. Did you have one for Anthony Manganiello in April of 2001?

86IMMANT

Abate - direct

1 THE WITNESS: Can I explain that, Judge?

2 THE COURT: All he's asking you is whether you had a
3 piece of paper.

4 A. No, I didn't have a piece of paper.

5 Q. You did not have an arrest warrant?

6 A. I did not have a piece of paper.

7 THE COURT: Move on.

8 Q. Did you know whether a piece of paper had had been issued
9 by a judge for Anthony Manganiello's arrest?

10 A. I didn't know that, sir.

11 MR. JOSEPH: Nothing further, your Honor.

12 THE COURT: Any brief cross?

13 MS. OKEREKE: Yes, your Honor. I don't know how brief
14 it is.

15 THE COURT: I'll help.

16 CROSS-EXAMINATION

17 BY MS. OKEREKE:

18 Q. Mr. Abate, how long were you employed by NYPD?

19 A. Twenty years.

20 Q. And for those 20 years, how long were you a detective?

21 A. Eleven years.

22 Q. What were your main duties and responsibilities in the 11
23 years that you were a detective?

24 A. I was in Bronx narcotics, we investigated all narcotics.
25 From narcotics I went into organized crime, investigation

86IMMANT

Abate - cross

1 division. And from the organized crime investigation division
2 I went into the detective bureau.

3 Q. At some point you were assigned to the 43rd Precinct, as
4 you testified, is that correct?

5 A. That's correct.

6 Q. What were your duties at the 43rd Precinct?

7 A. When I first got there I was assigned to the robbery unit.
8 I was there for about five or six months. From the robbery
9 unit I went into the regular squad where we investigated all
10 crimes from harassment to murder, excluding sex crimes and
11 robberies.

12 Q. You testified that at some point you became aware of the
13 shooting that occurred at 1700 Metropolitan Avenue on February
14 12?

15 A. That's correct.

16 Q. Just to clarify, how exactly did you learn of that
17 shooting?

18 A. I don't remember if we got requested via the radio or we
19 got notified from the desk sergeant where a lot of times we got
20 notified where we got called up by the squad and we were needed
21 to respond to a certain location.

22 Q. If you were notified by the desk sergeant, would you have
23 received that information from a radio call?

24 A. Not necessarily.

25 Q. On February 12, 2001 -- first off, you were shown a copy of

86IMMANT

Abate - cross

1 a Sprint report, is that correct?

2 A. Yes, ma'am.

3 Q. How often do you come across Sprint reports in your time as
4 a detective?

5 A. Just about every major crime we pull in.

6 Q. Are you trained in interpreting Sprint reports?

7 A. I'm not trained in it, no, ma'am.

8 THE COURT: I think this is a good place for us to
9 have a rest. Let's adjourn now and we will see you tomorrow
10 morning at 9:30. Please be on time because we can't start
11 unless you're all here. Have a good evening and do not discuss
12 the case amongst yourselves or with anybody else.

13 (Jury not present)

14 THE COURT: See you tomorrow.

15 (Adjourned to Thursday, June 18, 2008, at 9:30 a.m.)

16

17

18

19

20

21

22

23

24

25

1

INDEX OF EXAMINATION

2	Examination of:	Page
3	LUIS AGOSTINI	
4	Direct By Mr. Joseph	185
5	Cross By Ms. Okereke	277
6	Redirect By Mr. Joseph	326
7	SHAWN ABATE	
8	Direct By Mr. Joseph	333
9	Cross By Ms. Okereke	363

10

PLAINTIFF EXHIBITS

11	Exhibit No.	Received
12	25	185
13	29	188
14	40	190
15	19	195
16	14	197
17	33	200
18	61	221
19	61	221
20	28	228
21	4	228
22	5	231
23	26 and 27	233
24	24	257
25	10	258

1	23	259
2	16	266
3	17	340

4 DEFENDANT EXHIBITS

5	Exhibit No.	Received
6	W	284
7	U-3	286
8	V-3	287
9	S	288
10	A-2	288
11	T	290
12	U	293
13	Z	294
14	R	295
15	V	297
16	Y	298
17	S-4	299
18	T-4	300
19	U-4	302
20	V-4	303
21	W-4	304
22	B-5, C-5, and D-5	306
23	F-8	309
24	L-3	317
25	C	322

865MMANT

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 ANTHONY MANGANELLO,

4 Plaintiff,

5 v.

07 Civ. 3644 (HB)

6 LUIS AGOSTINI, individually
7 and as a New York City Police
Detective; SHAWN ABATE,
8 individually and as a New York
City Police Detective; ALEX
9 PEREZ, individually and as a
New York City Police Officer;
MIRIAM NIEVES, individually
10 and as New York City Police
Officer; and ROBERT MARTINEZ,
11 individually and as a New York
City Police Officer,

12 Defendants.

14 -----x
15 New York, N.Y.
June 19, 2008
9:30 a.m.

16 Before:

17 HON. HAROLD BAER, JR.,

18 District Judge

19 APPEARANCES

20 OSORIO & ASSOCIATES
21 Attorneys for Plaintiff
BY: MICHAEL JOSEPH

22 MICHAEL A. CARDOZO, Corporation Counsel
23 for the City of New York
24 Attorney for Defendants
BY: MARK ZUCKERMAN
AMY OKEREKE

86JMMANT

1 (Trial resumed)

2 (Jury not present)

3 THE COURT: I had a chat with Justice Marcus, who just
4 apparently got confirmed. I am not sure what he got confirmed
5 for. Is he a court of claims? That's what he was in Albany
6 for.7 He will tell Scaccia to be here at 10 in the morning
8 and asked me to ask both of you to confirm that date just so
9 that the rapid heartbeat of his trial don't confuse everything.

10 MR. ZUCKERMAN: Your Honor, is that tomorrow?

11 THE COURT: Tomorrow, Friday. We will interrupt and
12 indeed if there are other witnesses, just for the future
13 opportunities you may have to try cases in front of me, I'm
14 really quite flexible in terms of taking witnesses out of turn,
15 especially when they are on trial somewhere else.

16 Bring them in.

17 MR. JOSEPH: Judge, may we have one housekeeping
18 clarification?

19 THE COURT: Not yet. Maybe at the recess.

20 MR. JOSEPH: Very well, Judge.

21 THE COURT: Why isn't the witness in the box? Where
22 is he?

23 (Jury present)

24 THE COURT: I understand one of you has an opportunity
25 to watch a child be justly rewarded this afternoon for one or

86JMMANT

1 another things. So we will adjourn no later than 4:45 and
2 probably -- we will see. It just depends on where we are. We
3 are going to work all day tomorrow. I hope we will be moving
4 to the last vestiges of this trial by the time the weekend is
5 upon us, but I'm glad to see you all here and relatively on
6 time, more or less.

7 You're up.

8 You're still under oath, Detective. Do people still
9 call you detective like they call me judge even when I'm not
10 here, so to speak?

11 THE WITNESS: Sometimes, yes.

12 SHAWN ABATE, resumed.

13 CROSS-EXAMINATION (cont'd)

14 BY MS. OKEREKE:

15 Q. Detective Abate, how long were you employed by the New York
16 City Police Department?

17 A. Twenty years.

18 Q. Did you retire from the New York City Police Department?

19 A. Yes, I did.

20 Q. What was your rank at the time you retired?

21 A. My rank was detective, second grade.

22 THE COURT: Is that higher than first grade or lower?

23 THE WITNESS: One below first.

24 Q. Can you briefly tell us what your assignments were during
25 your tenure with NYPD?

86JMMANT

Abate - cross

1 A. I went to the academy. After the academy I went into NSU8.

2 THE COURT: I think we did this all yesterday. I'm
3 glad you know where we ended. That's encouraging. Whether we
4 need to have his résumé a second time is probably not my view.

5 Q. How long were you a detective with NYPD?

6 A. Eleven years.

7 Q. And as of February 12, 2001, what precinct were you
8 assigned to?

9 A. The 43rd Precinct.

10 Q. And were you a detective at that time?

11 A. Yes, I was.

12 Q. What specifically were your duties as a homicide detective
13 with the 43rd Precinct?

14 A. On that date?

15 Q. That's correct.

16 A. I was in the detective squad and my assignments were to
17 investigate all open complaints ranging from homicide to
18 harassment, excluding robberies and sex crimes.

19 Q. And you previously testified that you responded to the
20 homicide on February 12, 2001, the homicide of Albert Acosta,
21 correct?

22 A. Yes, ma'am.

23 Q. If you could just clarify for us, how did you learn of the
24 homicide? How were you notified about it?

25 A. Well, the squad was notified of a nonfatal shooting at the

86JMMANT

Abate - cross

1 time. It wasn't a homicide at our inception.

2 Q. Did you receive a radio call for this or did you receive
3 other notification?

4 A. I don't remember how we were notified.

5 Q. And you also previously testified that you at one point
6 were the case leader or the case detective?

7 A. That's correct.

8 Q. For the homicide.

9 At what point was the case, if you recall, transferred
10 or reassigned to another detective?

11 A. Once the victim was deceased.

12 Q. Do you recall what time it is that you learned of that?

13 A. I believe it was somewhere around 8:00 on the 12th.

14 Q. If you could please tell us, what were some of the
15 investigative actions that you took in furtherance of the
16 investigation into Albert Acosta's homicide?

17 A. When I first arrived on the scene?

18 Q. Yes.

19 A. When I first arrived on the scene, I had spoken to some of
20 the first responders that were there. They gave me a brief
21 synopsis of what had happened. One of the officers had brought
22 me into the basement of 1700 Metropolitan Avenue where the
23 crime occurred. This was like a basement area of the building.
24 Once I went into the basement then I set up a preliminary crime
25 scene.

86JMMANT

Abate - cross

1 Q. I'll stop you there. What do you mean by setting up a
2 crime scene? What does that mean?

3 A. That means we basically tape off with the yellow tape that
4 says police, don't cross so people don't contaminate the crime
5 scene.

6 Q. Why do you do that?

7 A. One, so they don't contaminate the crime scene. This way
8 we can assess the whole situation, look for evidence and things
9 like that.

10 Q. And is this one of your duties then as a case detective?

11 A. Yes, ma'am.

12 Q. What did you do after you taped off the crime scene?

13 A. After I taped off the crime scene, we had started a canvass
14 of the building, of Parkchester, actually.

15 Q. Do you recall what specific canvassing you conducted?

16 A. I don't remember which apartments I canvassed, but it was
17 within that building.

18 Q. What did you do after you canvassed?

19 A. After I canvassed, I came back, obviously, to the crime
20 scene, and shortly after that I responded back to the precinct.

21 Q. What, if anything, did you do when you arrived back at the
22 precinct?

23 A. When I got back to the precinct I did some brief computer
24 checks. And when I got back there, Mr. Manganiello was there
25 already, and I had entered into the room where he was and I did

86JMMANT

Abate - cross

1 a brief interview.

2 Q. And with respect to the computer checks that you conducted,
3 explain for us what type of computer checks you conducted and
4 why you would conduct those.

5 A. Well, the reason why we do computer checks is, one, it's
6 part of our duties as a detective. And some of the few checks
7 we do, we do checks on the building to see how many complaints
8 there had been at the building or any radio runs. We had a
9 victim's name at the time and we attempt to do a full check on
10 the victim as well. Any vehicles that were within the crime
11 scene we do what's called a vehicle canvass. We write down the
12 license plates and then we run them to get the registered owner
13 and where they lived to see if possibly they are in the area,
14 we can speak to them, see if they heard or saw anything. If
15 they are not in the area, then we want to determine why they
16 were there, why that car was in the area.

17 Q. And is this normally done with every car that is in a crime
18 scene?

19 A. That's part of a vehicle canvass, yes. We literally go up
20 and down a crime scene and jot down all the license plates.

21 Q. When you first arrived at the 43rd Precinct, did you know
22 if the victim of the crime was still alive?

23 A. At that time I believed he was still alive, yes, ma'am.

24 Q. Did you know if the victim -- did you at some point observe
25 the victim while you were at the scene of 1700 Metropolitan

86JMMANT

Abate - cross

1 Avenue?

2 A. No, ma'am. The victim was already removed to the hospital
3 when I got there.

4 Q. By the time you arrived the victim was gone?

5 A. Yes, ma'am.

6 Q. You mentioned your interview with the plaintiff. Tell us
7 in your own words what your observations were during that
8 interview.

9 THE COURT: This is the famous lunchroom interview?

10 THE WITNESS: Yes, sir.

11 A. When I got into the interview room, Mr. Manganiello was
12 already there with Detective Agostini. And my observations of
13 Mr. Manganiello, he was still fully dressed in his uniform, and
14 appeared somewhat disheveled, shirt a little bit out of his
15 pants, hair kind of messed up, sweating.

16 Q. Do you know why Mr. Manganiello was being interviewed?

17 A. He was brought there because he was a Parkchester employee
18 as well and knew he was basically in that same quadrant where
19 the radio run was.20 Q. Again, tell us more about this interview. What, if
21 anything, did you -- observations did you make?22 A. We started asking him simple questions. Normally, at the
23 beginning of any interview, we start with simple pedigree
24 information, name, address, phone number, so we have that later
25 on.

86JMMANT

Abate - cross

1 Q. Are these questions that you would ask of any witness?

2 A. Absolutely.

3 Q. Please continue.

4 A. So we started, again, to ask his name, how to spell his
5 name. He did give us how to spell his name. When we asked him
6 about his address, basically, he wouldn't give it to us or
7 couldn't remember, phone number, stated it was unlisted.

8 THE COURT: Haven't we heard all of this before?

9 MS. OKEREKE: I'd like the jury to hear it from
10 Detective Abate, a full detail of all of the observations and
11 all of the events and all of the action that he took in the
12 course of this investigation.

13 THE COURT: You have 15 minutes to do it in.

14 Q. Please continue, Detective.

15 A. Basically, once he wasn't -- he didn't give us his address
16 or stated his phone number was unlisted, that's what I remember
17 of it.

18 Q. Did you notice anything on plaintiff's clothing?

19 A. Yes, ma'am.

20 Q. What did you notice?

21 A. On the outside of his duty jacket, which is his outer
22 garment that he wears, there was some white stain on his
23 sleeve, I believe it was.

24 THE COURT: Did you ever find out what that was?

25 THE WITNESS: Did I ever find out what it was? No, I

86JMMANT

Abate - cross

1 did not find out what it was.

2 THE COURT: So to this day you don't know what that
3 white powder was?

4 THE WITNESS: I don't know what it is right now, no.

5 Q. Were any tests conducted on that white powder?

6 A. Yes, ma'am.

7 Q. What, if any, tests or what test was conducted?

8 A. They were testing to see if the material on his jacket was
9 similar to the dust we had found in the room where Mr. Acosta
10 was found. The walls were basically crumbling in there and
11 there was like a plaster dust.

12 Q. The same white dust you testified appeared on the
13 plaintiff's jacket?

14 A. Yes, ma'am.

15 Q. Did you take any notes during your interview of the
16 plaintiff?

17 A. No, ma'am.

18 Q. Why is that?

19 A. I don't normally have to take notes. This was a simple
20 interview that we were doing and I didn't feel I needed to take
21 notes. Plus, it was so short I didn't need to take notes.

22 Q. Did you take any notes of the conversations or of the
23 investigative activities that you conducted during the course
24 of the investigation?

25 A. Yes, ma'am.

86JMMANT

Abate - cross

1 Q. Where did you put these notes?

2 A. It was with the case file.

3 Q. Did you have occasion to use a spiral notebook during your
4 time canvassing or other investigative activities?

5 A. Yes.

6 Q. What is the purpose of a spiral notebook?

7 A. The spiral notebook is just a note pad that we carry to
8 every crime scene, and any investigative steps that I take I
9 put into the spiral notebook. At a later time, when I can sit
10 down and type it onto our official document, a DD5, is
11 basically memorialized from what I wrote.

12 Q. Is there any difference between what is in your notes and
13 what you would put in a DD5?

14 A. No, ma'am.

15 Q. What's in the spiral notes and what's in the DD5 are the
16 exact same things?

17 MR. JOSEPH: Objection, leading. Withdrawn.

18 A. Yes, ma'am.

19 Q. What did you do with your DD5s after you transcribe them?

20 A. They were placed into the case file.

21 Q. Approximately how long after you would take a notation in
22 your spiral notebook would you type up a DD5?

23 A. That's different every time, depending on how busy we are.
24 It could be the same day, it could be that night.

25 Q. But it was your practice again to create DD5s?

86JMMANT

Abate - cross

1 MR. JOSEPH: Objection, leading.

2 THE COURT: I'll allow it. We are going to move along
3 here very quickly.

4 A. Yes, it was my practice.

5 Q. After you were present during plaintiff's interview what,
6 if any, other actions did you take in the course of the
7 investigation into Albert Acosta's homicide?

8 A. I had arrested Mr. Manganiello.

9 Q. Who authorized this arrest?

10 A. The Bronx DA's office.

11 Q. And you conducted your arrest pursuant to this
12 authorization?

13 A. Yes, ma'am.

14 Q. How did you receive authorization from the Bronx County
15 DA's office?

16 A. I was notified through my supervisor that the Bronx DA's
17 office had given us authorization to place Mr. Manganiello
18 under arrest.

19 Q. When was the arrest or when did the arrest occur?

20 A. I believe it was in April of 2001.

21 Q. Two months after the homicide, is that correct?

22 A. That's correct.

23 Q. Were any other officers or police personnel with you when
24 you apprehended the plaintiff?

25 A. Yes, ma'am.

86JMMANT

Abate - cross

1 Q. Who was with you?

2 A. In my car was my supervisor, Sergeant John McGovern, and
3 there was another location within the vicinity of the house
4 that we were surveilling, and Detective Agostini was in that
5 car, and I don't remember who his partner was that day.

6 Q. And with respect to receiving authorization for an arrest
7 or making an arrest, do detectives have the authorization to
8 make an arrest without independent authorization?

9 MR. JOSEPH: Objection to form.

10 THE COURT: I don't understand the question.

11 Q. Do police detectives have independent authority to
12 effectuate an arrest?

13 MR. JOSEPH: Same objection.

14 THE COURT: I think that's more of a legal inquiry.
15 And the way you phrased it, any citizen has a right to make an
16 arrest, depending on what the action was.

17 Q. In a homicide case can you, without the authority of the
18 Bronx County District Attorney's Office, effectuate an arrest?

19 A. No, ma'am.

20 Q. What happened when you arrested the plaintiff?

21 A. Well, myself and Sergeant McGovern were watching one of the
22 locations that we knew Mr. Manganiello had frequented. At some
23 point he came out or I should say some people came out of a
24 house that we were watching, got into a car, I believe it was a
25 van, backed out of the driveway, and we started to follow the

86JMMANT

Abate - cross

1 vehicle because I didn't know who was in the car. The car
2 pulled into a gas station, pulled up to the pumps.

3 Mr. Manganiello exited the car, I believe he was driving.

4 At that point my car -- I put my car basically on the
5 other side of the pumps where his car was, got out, and I
6 identified myself, I called him by his first name because I
7 knew he was -- I assumed he knew who I was as well -- I
8 identified myself as a detective, told him he was being
9 arrested. I attempted to handcuff him. He resisted a little
10 bit. I said, this will be a lot easier -- I don't want to do
11 this in front of your family. He placed his hands behind his
12 back, and I placed him in the car and transported him back to
13 the 43rd Precinct.

14 Q. You just said that you believed that the plaintiff
15 recognized you also. Why is that?

16 A. Because he had seen me prior, the day of the homicide.

17 Q. Did you at any point use your weapon or draw your gun
18 during this arrest?

19 A. I did not draw my gun. I tactically approached the
20 vehicle. I did have my hand on my gun, yes, I did.

21 Q. Was Sergeant McGovern's gun drawn?

22 A. No, ma'am.

23 Q. Again, it was just you and Sergeant McGovern who
24 effectuated the arrest?

25 A. That's correct.

86JMMANT

Abate - cross

1 Q. Other than what you've previously testified to, did you
2 conduct any other activities concerning the investigation?

3 A. No, ma'am.

4 Q. Did you testify before the grand jury in this matter?

5 A. I don't believe I testified in the grand jury, no, ma'am.

6 Q. Did you give all of the information that you received
7 concerning this investigation and your activities to the case
8 leader?

9 A. Yes, ma'am.

10 Q. And who was the case leader, again?

11 A. For the homicide, it was Detective Luis Agostini.

12 MS. OKEREKE: Thank you.

13 THE COURT: Any redirect?

14 MR. JOSEPH: Very briefly, Judge.

15 REDIRECT EXAMINATION

16 BY MR. JOSEPH:

17 Q. Sir, I think you said you spoke to some of the first
18 responders when you arrived on the scene. Was one of those
19 first responders a Sergeant Ohle from Parkchester security?

20 A. I don't believe I spoke to Sergeant Ohle, but I don't have
21 documentation.

22 Q. I think during cross-examination you described
23 Mr. Manganiello's appearance on February 12, 2001 as sweaty and
24 a little bit disheveled?

25 A. That's correct, sir.

86JMMANT

Abate - redirect

1 Q. That would be conducive for someone who had just ran
2 several blocks, correct?

3 A. I can't say that.

4 Q. After someone has been running for several blocks it would
5 be expected that he would be a little sweaty, right?

6 MS. OKEREKE: Objection.

7 THE COURT: Sustained.

8 Q. Sir, as an officer, when a call of a 1013 or officer down
9 comes over a radio, it is expected that every officer in the
10 vicinity is supposed to arrive at that location, correct?

11 A. To respond to the scene, yes.

12 Q. And they are supposed to respond as quickly as possible
13 with all deliberate speed?

14 MS. OKEREKE: Objection.

15 THE COURT: I'll allow it. I am not clear why.

16 A. Officers respond as quickly as they can get there.

17 Q. Sir, if Mr. Manganiello was in the room where Mr. Acosta
18 was shot after receiving a call that Mr. Acosta had been shot,
19 that would explain why he had some powder on his jacket,
20 correct?

21 MS. OKEREKE: Objection, your Honor.

22 THE COURT: Overruled. I wouldn't phrase it like
23 that, but if you can answer, why don't you do that.

24 A. Could you ask that again, please.

25 Q. Would it be unusual for Mr. Manganiello to have some powder

86JMMANT

Abate - redirect

1 on his sleeve similar to that found in the area where
2 Mr. Acosta was shot if he was in fact in the room after he
3 received the call?

4 MS. OKEREKE: Same objection, your Honor.

5 THE COURT: Overruled.

6 A. If he was in the room, yes, he could get powder on the
7 sleeve.

8 Q. Sir, I think you said you didn't take notes during your
9 interview of Mr. Manganiello, is that correct?

10 A. That is correct.

11 Q. Sir, wouldn't you want to take down -- strike that.

12 As part of your normal course of business as to the
13 detective, don't you write down people's pedigree information
14 for later use in case you have to call them or contact them?

15 A. Yes, sir.

16 Q. Did you write down Anthony Manganiello's name?

17 A. I did not write down his name, no.

18 Q. Did anybody write down his name?

19 A. I don't know. I didn't.

20 Q. Sir, did you take any handwritten notes that he was
21 evasive?

22 A. I don't believe I took any handwritten notes at all for
23 that.

24 Q. When you print a DD5 it's basically a sum and substance,
25 correct?

86JMMANT

Abate - redirect

1 A. That's fair, sure.

2 Q. And sum and substance is not an exact translation of what's
3 contained in an original interview note, correct?

4 A. Sometimes, that's correct.

5 Q. And so, for example, there could be information contained
6 in a handwritten interview note that's not put into a DD5,
7 correct?

8 A. I would never say that, no.

9 Q. Sir, things could be in an original handwritten interview
10 note that may be phrased differently in a DD5, correct?

11 A. No, I wouldn't say that either.

12 Q. But there is a reason you're supposed to keep the original
13 handwritten interview notes, correct?

14 A. Sure.

15 Q. And that's because those are the most accurate record of
16 what happened at the point in time that you're recording the
17 events, correct?

18 MS. OKEREKE: Objection, your Honor.

19 THE COURT: Overruled.

20 A. No. Because I mean sometimes -- when we write notes, a lot
21 of times they are quick notes that we are writing, especially
22 for a case where we were canvassing within Parkchester, which
23 was so large, you know. You couldn't write everything down.
24 You were just getting the sum and substance of what these
25 people were saying.

86JMMANT

Abate - redirect

1 Q. By the way, as a result of your canvass, your extensive
2 canvasses, did any witness say they saw Anthony Manganiello
3 shoot Albert Acosta?

4 A. My canvass, no.

5 Q. Sir, to obtain authorization from the Bronx district
6 attorney, somebody had to provide that district attorney with
7 information that would establish probable cause, correct?

8 MS. OKEREKE: Objection, your Honor.

9 THE COURT: Overruled.

10 A. Could you ask that again, please?

11 Q. Sure. Isn't it true to obtain authorization to effectuate
12 an arrest for a homicide from the Bronx District Attorney's
13 Office, somebody would have to provide them with information
14 that would establish probable cause for the arrest?

15 MS. OKEREKE: Objection, your Honor.

16 THE COURT: Overruled.

17 A. Somebody would contact the district attorney and the
18 district attorney would filter through the information and
19 determine if there was enough probable cause and, if so, they
20 would give us authorization.

21 Q. In this case, who provided the district attorney with the
22 information that led to the authorization for Anthony
23 Manganiello's arrest?

24 A. I believe it was Detective Agostini.

25 Q. Did you provide some of that information, too?

86JMMANT

Abate - redirect

1 A. Did I physically speak to the attorney?

2 Q. Did you create any documents that were given to the
3 district attorney which they relied upon to issue authorization
4 for the arrest?

5 MS. OKEREKE: Objection.

6 THE COURT: Sustained.

7 Q. Now, you talked about a location Mr. Manganiello
8 frequented. It was a family member's house, correct?

9 MS. OKEREKE: Objection.

10 A. Yes.

11 THE COURT: I don't think her inquiry really went to
12 whose house.

13 MR. JOSEPH: I just want to establish, Judge, it
14 wasn't a bar or something of ill repute.

15 MS. OKEREKE: Objection, your Honor.

16 A. It was a house.

17 MR. JOSEPH: That's all I have.

18 THE COURT: You're excused.

19 (Witness excused)

20 THE COURT: What's next?

21 MR. JOSEPH: At this point, plaintiff would call Mario
22 Manganiello. He is outside. I'll get him.

23 MR. ZUCKERMAN: Your Honor, note our objection to this
24 witness.

25 MARIO MANGANIELLO,

86JMMANT

Abate - redirect

1 called as a witness by the Plaintiff,

2 having been duly sworn, testified as follows:

3 THE COURT: I had hoped you could reach a stipulation,
4 but my guess is you never tried, so I essentially did one for
5 you and that will be the topic that he stays with and goes no
6 further. But you have an objection?

7 MR. ZUCKERMAN: We object to this witness testifying.
8 We believe --

9 THE COURT: I told you you have an objection. If I
10 want you to talk more, I'll tell you. Otherwise -- I thought
11 we did this at the outset. You say objection and you can or
12 cannot, if you choose, give me a one-word ground. Do you
13 remember that conversation?

14 MR. ZUCKERMAN: Yes, your Honor.

15 THE COURT: Good.

16 MR. JOSEPH: May I inquire, your Honor?

17 THE COURT: You may.

18 DIRECT EXAMINATION

19 BY MR. JOSEPH:

20 Q. Sir, do you know Anthony Manganiello?

21 A. Yes, sir.

22 Q. How do you know him?

23 A. He's my brother.

24 Q. I am going to draw your attention to February 12, 2001. Do
25 you recall that date?

86JMMANT

M. Manganiello - direct

1 A. Yes, I do.

2 Q. On that date did you go to the 43rd Precinct?

3 A. Yes.

4 Q. About what time did you arrive?

5 A. Somewhere between 11:30 in the morning and noon.

6 Q. Sir, what observations, if any, did you make of your
7 brother when you arrived?8 A. Well, when I first saw him he was sitting in an
9 interrogation room where he had no uniform shirt on, and he had
10 electrocardiogram electrodes attached to his chest. He
11 appeared to be very disheveled and pale.

12 Q. Sir, at this point did you call a lawyer for your brother?

13 A. Yes, I did.

14 Q. What was this lawyer's name?

15 A. Mr. Richard Ross.

16 Q. Did Mr. Richard Ross come to the 43rd Precinct?

17 A. Yes, he did.

18 Q. Did you ever hear Mr. Ross say to Mr. Agostini, was it
19 intentional?

20 A. No, at all.

21 Q. Sir, what difference, if any, do you notice in your
22 brother's personality compared to before this prosecution?

23 MR. ZUCKERMAN: Objection, your Honor.

24 THE COURT: I'll allow it.

25 A. Prior to this happening to him, he was a very lively,

86JMMANT

M. Manganiello - direct

1 vivacious individual, very caring, very warm, participated
2 socially among family gatherings with friends and with groups.
3 He was working, he was happy to be employed and settling into a
4 career that he enjoyed. He took a lot of pride in his work,
5 and he was a very happy --

6 THE COURT: I think we got your drift. He's not like
7 that anymore?

8 THE WITNESS: No, at all. He's merely a shell of the
9 person that I once knew at one time. He is very depressed. He
10 spends a lot of time at his apartment home alone. He doesn't
11 very much get involved in any social functions or gathering.
12 He doesn't participate in anything. He feels very much like he
13 lost his ability to be productive in society again.

14 MR. ZUCKERMAN: Your Honor, I object.

15 THE COURT: Overruled.

16 And this change came about directly following the
17 incident that we are talking about here, the arrest and the
18 following trial?

19 THE WITNESS: Yes, sir, your Honor, without a doubt.

20 MR. JOSEPH: Nothing further, your Honor.

21 THE COURT: Any cross?

22 MR. ZUCKERMAN: Briefly, your Honor.

23 CROSS-EXAMINATION

24 BY MR. ZUCKERMAN:

25 Q. Mr. Manganiello, on February 12, 2001, you received a call

86JMMANT

M. Manganiello - cross

1 that your brother was at the 43rd Precinct, correct?

2 A. Yes, sir.

3 Q. And you went to the 43rd Precinct to find out why your
4 brother was there, correct?

5 A. Say it again, please.

6 Q. You went to the 43rd Precinct to find out why your brother
7 was there, correct?

8 A. Yes.

9 MR. ZUCKERMAN: That's all, your Honor.

10 MR. JOSEPH: Nothing further, your Honor.

11 THE COURT: You're excused. Thank you very much.

12 THE WITNESS: Thank you, your Honor.

13 (Witness excused)

14 THE COURT: What's next?

15 MR. JOSEPH: Your Honor, at this point, we would call
16 Richard Martinez.

17 Your Honor, may Mr. Manganiello remain in the
18 courtroom?

19 THE COURT: Absolutely.

20 RICHARD E. MARTINEZ,

21 called as a witness by the Plaintiff,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. JOSEPH:

25 Q. Sir, on February 12, 2001, were you a detective assigned to

86JMMANT

Martinez - direct

1 the 43rd Precinct?

2 A. Yes.

3 Q. Can you tell us from when to when were you assigned to the
4 43rd Precinct?

5 A. I was assigned, I believe it was in June of 1993, and then
6 around October of 2001, I was temporarily reassigned to an
7 anthrax response unit down by the World Trade Center.

8 Q. Sir, on February 12, 2001, did you become involved into the
9 investigation of the death of Albert Acosta?

10 A. Yes.

11 Q. And did you respond to the scene at 1700 Metropolitan
12 Avenue in the Bronx, New York?

13 A. Yes, I did.

14 Q. And did you interview a gentleman named Walter Cobb?

15 A. Yes, I did.

16 Q. And did you create a DD5 which we have in evidence as
17 Exhibit 1. Did you create that document, sir?

18 A. Yes, I did.

19 Q. And that document was created when you got back to the
20 station house, correct?

21 A. Correct, sir.

22 Q. And when you met with Mr. Cobb did you take interviews,
23 handwritten notes of what he said?

24 A. Mr. Cobb, yes.

25 Q. And what happened to those notes?

86JMMANT

Martinez - direct

1 A. When I got back to the precinct I took those notes and
2 typed word for word from my notes onto the DD5 here to this
3 copy.

4 Q. Sir, isn't it true that the DD5 is a paraphrase -- isn't it
5 true your DD5 is a paraphrase, not a word-for-word translation,
6 transcription?

7 A. My notes are sum and substance. When you take the notes to
8 memorialize them to a legal document, the way I do it, it's
9 exactly the way I write my notes. My notes might have been sum
10 and substance, some might be quotes, depending what the person
11 has told me. Whatever I wrote on the notes I type on the
12 report outside, correcting my bad spellings sometimes.

13 Q. Sir, isn't it true that in your DD5, if you're doing it
14 word for word, you'll put down quotations; otherwise, it's just
15 your own paraphrasing?

16 A. I'll put down a quotation if the person says something
17 like, I did X, Y, and Z, and they are really adamant about it,
18 then I'll put a quotation. But as they're talking, you try to
19 write as quick as someone is talking and sometimes you have to
20 back them up, and basically you get their whole story in sum
21 and substance, and then that gets typed onto the DD5.

22 Q. You gave a deposition, correct, sir?

23 A. Yes, sir.

24 Q. Were you asked this question and did you give these answers
25 at page 32, line 22:

86 JMMANT

Martinez - direct

1 "Q. Now are the DD5s word for word of what's in your spiral
2 notebook or are they paraphrased?

3 "A. If I paraphrase I usually put, that's me, I put sum and
4 substance.

5 "Q, Okay,

6 "A. If it's a quote, if somebody says yes, I did it, you know,
7 quote, I'll put a quote. That's how I do it."

8 A. May I see, please?

9 Q. Sure,

10 A. Thank you.

11 MR. ZUCKERMAN: Your Honor, there is no inconsistency.
12 Objection.

17 Go ahead.

18 Q. Line 22, sir, page 32.

19 A. Thank you. What I'm saying is --

20 Q. Sir, did you give that testimony, yes or no?

21 A. Yes, I did.

22 Q. Sir, isn't it true that you don't have a memory of what
23 Mr. Cobb actually said, correct, apart from what's in the DD5?

24 A. Correct, sir.

25 THE COURT: Are most memo book entries amongst your

86JMMANT

Martinez - direct

1 squad pretty much the same, as you say yours are, that they do
2 virtually word for word what the interviewee says?

3 THE WITNESS: With me, your Honor, like if I'm
4 interviewing you and talk to you, I'll write as quickly as I
5 can. I don't tape it, so that's why I say I paraphrase
6 sometimes in sum and substance. But if you actually are sure
7 on something and it's a fact that you're telling me something
8 like this happened this way, I'll quote it.

9 When I put it on to the DD5 I put sum and substance on
10 the DD5 because that's how I took my notes in sum and substance
11 and that's why I put it on the DD5 in sum and substance,
12 meaning this is what he had -- the person had told me. And
13 then if there is a quote in there I would quote it, just like I
14 had it in the notes. Otherwise, it would be how I heard it
15 when the person explained to me and I wrote it down.

16 THE COURT: The DD5 is a narrative, right, while your
17 memo book is just notes that you made? Look at this one. This
18 is not yours. That's Mr. Abate. That's a memo book entry
19 denominated Exhibit 13 that I just happened to come across.
20 Isn't that a memo book entry, or not? I don't want to not know
21 what I'm talking about all of the time.

22 MR. ZUCKERMAN: Your Honor, I would object.

23 THE COURT: Overruled. The likelihood is when I ask a
24 question you're welcome to object, but you can rest assure that
25 it will likely be overruled.

86JMMANT

Martinez - direct

1 MR. ZUCKERMAN: Yes, your Honor.

2 THE WITNESS: What the memo book --

3 THE COURT: What is that?

4 THE WITNESS: I would just look at this as being
5 notes. If I can explain.

6 THE COURT: Yes.

7 THE WITNESS: The memo book, you do have memo books,
8 like a patrol officer has a memo book and carries it with them
9 on patrol. That is my own personal experience, you don't have
10 that, you don't write your notes like if you go out on a case,
11 whatever it may be. That memo book basically tells you when
12 you reported to work, if you went downtown to court. It's just
13 your generalization. That's a memo book of your accounts of
14 when you started work, when you left work.

15 When you go out on a case, we usually take maybe a
16 spiral notebook, and you write it from there on a spiral
17 notebook. But it's not called -- we call it a spiral. It's
18 not called an actual memo book. Memo book is like a little
19 blue packet book that most cops have.

20 THE COURT: What is that, if you can tell?

21 THE WITNESS: To me it wouldn't be a copy of a memo
22 book, but you'd have to ask Detective Abate. The memo books
23 are like, to describe it, it's about maybe three, four inches
24 wide, and maybe about six, seven inches, and it's like a flip
25 pad. That would be an official PD memo book.

86JMMANT

Martinez - direct

1 THE COURT: When you were talking about legal
2 document, you were talking about a DD5?

3 THE WITNESS: Yes, sir.

4 THE COURT: I am not sure I got the answer, but I'll
5 take it.

6 Q. Sir, if I understand your testimony correctly, when you
7 interview a witness are you saying you don't take down word for
8 word what the witness says?

9 A. You try to, but it's like if I'm talking to somebody --
10 when you interview somebody, you don't record it, you don't
11 take it with a portable recorder or anything. Sometimes they
12 talk fast, sometimes they are hard to understand. You try to
13 get their whole story. You try to back them up if you miss
14 something, or you do it in your best ability to get their full
15 statement. And I can only talk for myself, I read -- a lot of
16 times I'll go back and I'll read my notes back to that witness.
17 This is what you told me, and they will -- yeah, or they may
18 say no, the color was this color not that color, or you forgot
19 to put the color down, and I'll correct my notes.

20 Q. Sir, isn't it true that those handwritten notes in the
21 spiral notebook, to the best of your ability, you take them
22 word for word documenting what the witness said on the scene?

23 MR. ZUCKERMAN: Objection, your Honor. Asked and
24 answered and argumentative.

25 THE COURT: Sustained.

86JMMANT

Martinez - direct

1 Q. Sir, in February 2001, was it your protocol to take what a
2 witness says down word for word in your notebook?

3 MR. ZUCKERMAN: Same objection, your Honor.

4 THE COURT: Sustained.

5 Q. Sir, on February 12, 2001, did you give all of your
6 handwritten notes of witness statements to Detective Agostini?

7 A. Yes. After I was done typing my work, my DD5s, yes.

8 Q. What you do is you attach the notes to a DD5, correct?

9 A. Yes, sir.

10 Q. And that way you have a complete record, so to speak, your
11 summary and the original notes?

12 A. Correct, sir.

13 Q. That's for evidentiary purposes, correct?

14 MR. ZUCKERMAN: Objection, your Honor.

15 THE COURT: Overruled.

16 A. Yes.

17 Q. By the way, did you ever see those notes after you gave
18 them to Mr. Agostini?

19 A. No.

20 THE COURT: Let me ask you something else. In terms
21 of the preparation for this lawsuit, did you review your DD5s?

22 THE WITNESS: Yes, sir.

23 THE COURT: And what else did you look at?

24 THE WITNESS: Just my deposition transcript. That's
25 it.

86JMMANT

Martinez - direct

1 THE COURT: And do you know whether or not all of the
2 defendants did the same thing, or you don't know?

3 THE WITNESS: I don't know.

4 Q. Sir, during the time you were at the 43rd Precinct, was
5 there a procedure for storing homicide case files?

6 A. Yes.

7 Q. What was the procedure?

8 A. Well, if it's an active current case that you're actively
9 working on and the detective is coming in like day after day,
10 not off for a couple of days, usually you keep it on your desk
11 because you've got to refer to it because you're actively
12 working on it. Or it may be in the supervisor's office because
13 they want to review the case folder. If it's going to be
14 neither, it gets filed, there is a file room, file cabinet, and
15 it gets filed there.

16 Q. Sir, what was the purpose of keeping the case files in the
17 file room?

18 A. Just so it can be easily accessed and you know where it is
19 to get it if it's needed for court or somebody needs to look at
20 it or whatever it may be.

21 Q. And, sir, are they organized and filed by year and date?

22 A. Yes. It's done by date and I believe it might be done in
23 numeral order of the homicide number, like 2001, one of 2,000,
24 two of 2,000, and so on.

25 Q. Is it done that way so the files don't get lost?

86JMMANT

Martinez - direct

1 A. Yes. And you can easily access it. You can locate it if
2 you're looking for a particular one.

3 Q. Has that been your experience for the entire time you've
4 been at the 43rd Precinct?

5 A. Yes.

6 Q. Sir, in your experience, would it have been unusual for a
7 detective to put a file on top of a locker?

8 MR. ZUCKERMAN: Objection, your Honor.

9 THE COURT: Overruled.

10 A. I've never experienced anything like that, so I don't -- I
11 can say where I put mine. They are either with me, on my desk
12 or supervisor's room or I dump them in the file cabinet.

13 Q. In your time at the 43rd you never heard of a detective
14 putting a case file on top of a locker?

15 MR. ZUCKERMAN: Objection, your Honor.

16 THE COURT: Overruled.

17 A. No, sir.

18 Q. Sir, have you ever heard of somebody putting a case file on
19 top of a locker without a suspect or victim's name on it?

20 MR. ZUCKERMAN: Objection, your Honor.

21 THE COURT: Same ruling.

22 A. Well, on case folders you usually don't put -- I'm trying
23 to think. Case folder usually has the complaint number. It
24 may not have the subject's name on it, if that's the first half
25 of your question. Can you repeat --